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Director's Decisions for California

Public Sale

1961-1970

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DOCKET FILES

PUBLIC SALE : * 3 Classification

A public sale will be vacated where the land involved is within the influence of expanding cities or towns where land uses are changing to more intensive uses resulting in fairly rapid value changes.

Lowell R. Hardy, Sacramento 057257 (January 10, 1961)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 057257
5.04g

January 10, 1961

Certified Mail
Return Receipt Requested

DECISION

Lowell R. Hardy : Public Sale

Decision Affirmed, as Modified

Mr. Lowell R. Hardy has appealed from the decision of the Manager, Sacramento Land Office, dated May 17, 1960, vacating the public sale of certain lands for which he was declared the high bidder, for the reason that the lands involved came within the purview of the Secretary's announced anti-speculation policy.

The record shows that on December 8, 1959 appellant was the high bidder for 160 acres of land described as the SE¼ Sec. 25, T. 16N., R. 7E., M.D.M., California, which were offered for sale, pursuant to public sale application, Sacramento 057257, filed on December 22, 1958 by Frank Ottaviano. On December 10, 1959, during the 30 day preference right period, further action on the case was suspended upon a congressional request to suspend all action involving appraisal activity for at least 60 days.

The field examination report shows the land involved to be within the influence of Grass Valley and a community named Rough and Ready. It further shows the present use of the lands are for possible homesite development on small areas and that in the past few years there has been a lot of speculation for homesite developments in the area on land similiar to the land involved and local residents report that a new highway is proposed for the area less than one-fourth mile from subject land.

Subsequently, a review of the case file was made in the light of the Secretary's announced anti-speculation policy of February 23, 1960 and the manager held in the decision appealed from, that the public sale is vacated for the following stated reason:

> "* * * that the lands are located within the influence of expanding cities and towns to the extent that land

> uses are in a period of change to more intensive uses and, as a result, values are in a state of fairly rapid change."

In his appeal, appellant contends, in substance, that the offer for sale, and sale was prior to the congressional request that all appraisal action be suspended and was, therefore, not subject to the Secretary's statement of policy of February 20, 1960, but he cites no authority in support of his contentions. He further contends that the land involved is not in an area where land values are so unstable that they cannot be appraised accurately and asserts the appraised value of $60.00 per acre for subject land is a fair appraisal as of the date of sale. He submits no positive evidence in support of his contentions but asserts that he and his joint (land) owners purchased land from Frank Ottaviano (the public sale applicant herein) for $65.00 per acre on August 12, 1959.

Section 7 of the act of June 28, 1934 (48 Stat. 1272) as amended by the act of June 26, 1936 (49 Stat. 1976: 43 U.S.C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto, for any other use than the use provided under that act. In exercising the discretionary authority vested in him, the Secretary, or his delegate, may properly consider and weigh all factors bearing on the suitability of the land for use or disposal, including the effect on the public interest, Nelson A. Gerttula, 64 I.D. 225 (1957).

The authorized officer may at any time, previous to issuance of a cash certificate, determine that the land should not be sold and such determination gives the applicant or bidder no contractual or other rights as against the United States and a determination so made creates no contractual or other obligation on the part of the United States. 43 CFR. 250.5. A classification will not be disturbed in the absence of clear and positive evidence that it is erroneous, Mary Refugio Jackson et al. A-27236, A-27237 (February 29, 1956).

Since the land involved is within the influence of an expanding city or town where land uses are changing to more intensive uses, resulting in fairly rapid value changes, it was proper to vacate the public sale and reject the application.

Accordingly, the Manager's decision is affirmed.

Mr. Lowell R. Hardy is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Mr. Lowell R. Hardy (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RLE

Vacated by Dec. 4-14-61

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

FEB 15 10 00 AM 1961

PUBLIC SALE * 2 Application
ADJUDICATION * 1 Generally

Where an application for the sale of public land is rejected and the allegations on appeal are merely self-serving declarations, unsupported by any evidence, the decision appealed from will be affirmed.

James E. Haldon, Sacramento 059820 (January 11, 1961)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento 059820
5.04g

January 11, 1961

Certified Mail
Return Receipt Requested

DECISION

James E. Haldon : Public Sale

Decision Affirmed

James E. Haldon has appealed from the decision of the Manager, dated August 2, 1960, which rejected his public sale application for the reasons that the land values in the area are so unstable they cannot be appraised with accuracy and the land uses are changing from agricultural and grazing to more intensive uses.

The appellant alleges that the subject land is isolated and will not in the foreseeable future lend itself to any form of recreational, residential, or commercial development.

The appellant has taken no exception to the holding that the land values in the area are too unstable to be appraised accurately, therefore, it must be taken as admitted.

The applied for land is located within ½ mile of an improved road between Lower Lake and Kelseyville, in Lake Valley, California, and it is located 1½ miles south of Clear Lake, which is one of the major recreational areas in North Central, California.

Assuming that the subject land is isolated, as alleged, that does not dispute the fact that the land is located within the influence of expanding cities or towns where the land uses are becoming more intensive.

The appellant's allegation that the land will not, in the foreseeable future lend itself to any form of intensive development is not sustained by the evidence and it is at best a self-serving declaration that is lacking in probative value. Therefore, it cannot be given any consideration.

Accordingly, the Manager's decision is affirmed.

James E. Haldon is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended.

See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Charles F. Jonas, Attorney for Appellant (Certified Mail)
James E. Haldon (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0139550
5.04g

Certified Mail
Return Receipt Requested

DECISION

January 31, 1961

Guy P. Mariner :
Mable R. Mariner : Public Sale

Decision Affirmed

Guy P. and Mable R. Mariner have appealed from the decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated April 19, 1960, vacating a public sale of land, held on December 9, 1959, for the reason that the land involved is within the influence of expanding cities and towns, and that consummation of the sale would be violative of the Department's anti-speculation policies announced February 23, 1960. The decision stated that the land in question is located approximately five miles southeast of Hesperia, California and some two miles south of the rapidly developing Antelope Valley area.

The record shows that appellants filed their public sale application on March 22, 1956 under Section 2455 Revised Statutes, as amended (43 U.S.C. 1171), and the regulations thereunder (43 CFR 250) for land described as the SE$\frac{1}{4}$NE$\frac{1}{4}$ Sec. 15, T. 3 N., R. 4 W., S.B.M. California, containing 40 acres. The appraised value was established at $40.00 per acre July 16, 1958, and the land was offered for sale at auction on December 9, 1959. It does not appear that a review of the appraisal was made since the above date. On December 10, 1959 the Transworld Resources Corporation was declared the highest bidder. Appellants did not bid but thereafter asserted a preference right claim as provided by 43 CFR 250.11(b).

The Secretary of the Interior, on December 10, 1959, suspended all actions on public sale cases where appraisals were involved for a period of 60 days. Subsequently on February 23, 1960, the Secretary announced his policy pertaining to land sales under the authority of the Public Sales Act (Section 2455 R.S.) which, insofar as it applies to the instant case, states: "no land will be classified as suitable for sale at auction if: (b) The land is within the influence of expanding cities or towns where the land uses are changing to more intensive uses." In light of the quoted policy a field examination was made on April 5, 1960, which shows that the subject land is approximately five miles from the intensively developed Hesperia area and approximately two miles from the rapidly developing Antelope Valley area and, therefore, falls in the category of land within the influence of expanding cities or towns where the land uses are changing to more intensive uses.

The appellants assert in substance that since the Bureau allowed their public sale application, permitted the subject land to be sold and allowed them to file a preference right claim, it seems apparent that the Bureau is applying the new policy retroactively to transactions completed prior to its announcement. They further assert that there has been no marked changes to show that the land is changing to more intensive uses but they submit no positive evidence to show that the reclassification is erroneous. Cf. Mary Refugio Jackson et al., A-27236, A-27237, (February 29, 1956).

The laws provide that the Secretary of the Interior may "order into market and sell at public auction * * * any isolated or disconnected tract of the public domain not exceeding one thousand five hundred and twenty acres which, in his judgment, it would be proper to expose for sale" and that "any legal subdivision of public land, not exceeding seven hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation may, in the discretion of said Secretary, be ordered into market and sold * * *." Section 2455 of the Revised Statutes, 43 U.S.C. 1171, (Emphasis supplied). Hence, the filing of a public sale application imposes no mandatory duty upon the Secretary to convey the applied for land to the applicant. While the facts in United States ex rel McLennen v. Wilbur, and related cases, 283 U.S. 414 (1931), are different, the language of the Court respecting the Secretary's right to grant or deny any application is significant. This language would apply to any situation in which the Secretary acts pursuant to his recognized powers in what he "as guardian of the people" deems to be "in the best interests of the United States" with respect to lands of the United States under his jurisdiction. Indeed, the Secretary could not, if he would, relinquish his responsibilities under the law. Thus, it cannot be said that the rulings of the Department in Stanley Odlum and Avila Oil Company, A-27502 (January 13, 1958) and Franco Western Oil Company et al., 65 I.D. 429 (1958), which hold that a statute or regulation will not be applied retroactively to the detriment of an applicant, were intended to preclude the Secretary from determining that a sale of land will not be consumated when there is reason to believe its sale would not be in the public interest, and from applying that determination to pending applications and sales while publishing regulations applicable to all future applications pursuant to the Administrative Procedure Act.

The question of the authority of an administrative officer to perform a statutory duty even though his action has a retroactive effect was considered and the authority recognized and affirmed after the enactment of the Administrative Procedure Act in Securities Commission v. Chenery Corp., et al., 332 U.S. 194 (1947). The Court Said:

> "That such action might have a retroactive effect was not necessarily fatal to its validity. Every case of first impression has a retroactive effect, whether the new principle is announded by a court or by an administrative agency. But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles."

The court pointed out that:

> "The function of filling in the interstices of the Act should be performed as much as possible, through this quasi-legislative promulgation of rules to be applied in the future. But any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise. * * * Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforseen situations. * * *
>
> "In other words, problems may arise in a case which the administrative agency would not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule."

In National Labor Relations Board v. Guy F. Atkinson, et al., 195 F. 2d 141 (1952), the Court construed the Chenery case to say that administrative rules may in some cases be applied retroactively and definitely concluded that the Administrative Procedure Act did not limit adjudications to prospective operations even where they announced principles not previously embodied in regulations.

In the instant case the retroactive application of the Department's anti-speculation policies is not precluded by legal or equitable principles. As cash certificates had not been issued, the appellants had no rights, legal or equitable, in the applied for land. The regulations plainly state:

> "(U)ntil the issuance of a cash certificate, the authorized officer may at any time determine that the lands should not be sold, the applicant or any bidder has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligation of the United States." 43 CFR 250.5.

Under this provision the Department has held a determination that land should not be sold at public sale may be made after the land has been offered for sale, but before the date of the sale, Frank B. Powell Lumber Company, Inc., A-26461 (April 23, 1952); after the high bidder has been declared, Alexander David Norton, A-27040 (March 7, 1955); and after the purchaser has been declared, Buck Willcoxson, A-27402, A-27403 (December 17, 1956).

In the Willcoxson case the Department stated:

> "(T)he regulations to which the applications for public sale and the decision ordering the land sold at public sale referred include the regulation that the purchaser acquired no contractual or any right against the United States until the cash certificate is issued. The Secretary could have chosen by regulation any point in the proceedings prior to the issuance of a cash certificate at which a purchaser would acquire rights in the land offered for sale. He chose to retain his discretion over whether land should be sold or not until the cash certificate should be issued.
>
> "Where the United States reserves to itself a right to reject all bids or to set aside a sale after it is made, the reservation is binding upon the bidder and may be exercised by the United States without liability. Erie Coal and Coke Corporation v. United States, 266 U.S. 518 (1925); Holliday v. Higbee, 172 F.2d 318 (10th Cir., 1949); United States v. Weisbrod, 202 F. 2d 629 (7th Cir., 1953), cert. denied 346 U.S. 819, rehearing denied 346 U.S. 880; C. C. Thomas, A-27380 (November 7, 1956).
>
> "As the court said in United States v. Weisbroad (supra) ' * * * If one does not wish to bid for Government Surplus Property with the condition attached, his alternative is to make no bid."

Accordingly, the Land Office had the power to vacate the sale after determining that the land in question is located within the influence of expanding cities and towns and as the Secretary has determined that the sale of such lands would not, at the present time, be in the public interest.

The appellants are allowed the right of appeal in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amound of the filing fee will be $5.00 for each application included in the appeal. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Hon. Harry R. Sheppard, House of Representatives
Mr. Guy P. Mariner (Certified Mail)
Mrs. Mable R. Mariner (Certified Mail)
Lands Staff Officer
Appeals List No.1
RLE

DOCKET FILES

ADJUDICATION * 1 Generally

PUBLIC SALES * 1 Generally
* 3 Classification

The filing of a public sale application imposes no mandatory duty upon the Secretary to convey the applied for land to the applicant. The Secretary has the right to grant or deny any application when acting pursuant to his recognized powers in what he as guardian of the people deems to be in the best interests of the United States with respect to land of the United States under his jurisdiction.

Administrative rules may in some cases be applied retroactively. The Administrative Procedure Act did not limit adjudications to prospective operations even where the rules announced principles not previously embodied in regulations.

Parties to a public sale, although declared purchasers by a decision of the Land Office do not acquire legal or equitable rights to be offered land until the issuance of cash certificates, and sales may be vacated prior to this time without liability on the part of the United States.

Guy P. and Mable R. Mariner, Los Angeles 0139550 (January 31, 1961)

DOCKET FILES

PUBLIC SALES * 1 Generally

PUBLIC LANDS * 10 Appraisal

Until a cash certificate is issued to a declared purchaser, the Bureau retains the power to reappraise lands offered at public sale.

Where one applying for the purchase of public lands protests the established purchase price, he must, in order to prevail, submit substantial evidence that the appraised value of the land is unreasonable and excessive.

Rush E. Pierce, Los Angeles 0103346 February 13, 1961)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0103346
5.04g
February 13, 1961

Certified Mail
Return Receipt Requested

DECISION

Rush E. Pierce	:	Public Sale

Decision Affirmed

Mr. Rush E. Pierce has appealed from a decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated February 15, 1960, dismissing his protest against the amount at which a tract of land applied for under the Public Sale Act had been appraised.

The tract of land consists of 160 acres, and in 1959 it was appraised by Land Examiners of this Bureau at $10,080.00, or $63.00 per acre. This value was arrived at after a consideration of the prices at which similar lands in the immediate area had been sold within the recent past.

Mr. Pierce states that he applied for this land in 1953, that he was then advised that its appraised value would probably be about $600.00, that the matter has been pending over the years through no fault of his own, and that the 1959 appraisal should be set aside, and the "original" appraisal accepted.

The case file reveals that the appraisal conducted in 1959 was the first official appraisal of the land; there is no earlier appraisal of record. Any estimates made by Bureau employees at the time of the filing of the public sale application as to the probable appraised value of the land were mere unauthorized surmises, and not in any way binding upon this Bureau. But, even if these estimates be considered official appraisals, the power to reappraise remains with the Bureau until the issuance of a cash certificate to a declared purchaser. 43 CFR 250.5; Buck Willcoxson, A-27402 (December 17, 1956). An official appraisal in 1953, therefore, would be no bar to another official appraisal in 1959.

Aside from contending that the results of an earlier appraisal should be followed, the appellant has submitted no evidence to show in what respect the 1959 appraisal is in error. Where one applying for the purchase of public land protests the established purchase price, he must, in order to prevail, submit substantial evidence that the appraised value of the land is unreasonable and excessive. Jerry R. Crouse, A-27241 (December 23, 1955). This Mr. Pierce has failed to do, and the decision from which he appealed must, therefore, be affirmed.

Mr. Pierce is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

A. H. Dunn

Appeals Officer

Enclosure

DISTRIBUTION:

Mr. Rush E. Pierce (Certified Mail)
Lands Staff Officer
Appeals List No. 1
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DOCKET FILES

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UNITES STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 056784
5.04g

February 21, 1961
Certified Mail
Return Receipt Requested

DECISION

Merle A. Gomes : Public Sale

Decision of Manager Affirmed

Mr. Merle A. Gomes has appealed from the Manager's decision, dated February 17, 1960, rejecting his application to have certain public lands ordered into market and sold at public auction pursuant to the "mountainous or too rough for cultivation proviso" of the Public Sale Act, as amended (43 U.S.C., 1958 ed., 1171). The Manager rejected the application because the public lands in the area have been classified as more suitable for Federal retention as grazing and public hunting lands.

A Bureau field examination report indicates that the land involved is part of a relative solid block of vacant public domain approximately 20 miles east of San Jose, California and the south end of San Francisco Bay. This general area is one of the fastest growing population centers in the United States. The lands themselves are rough and presently best suited for livestock grazing and extensive recreation such as hunting. The area is heavily covered with brush and supports a large deer population. One reason for the high deer population is that public access to the lands is cut-off by private land ownership. However, due to public pressure for private hunting preserves, and general land speculation, lands in this area are becoming quite valuable; more valuable than the livestock productive capacity of the area would warrant. The public lands in the area are presently being utilized for livestock operations.

On appeal, the appellant asserts that he wishes to acquire the lands because small portions could be used for grazing in connection with his livestock operations on adjoining private land, and to provide access to other lands.

It is the express policy of the Department of the Interior to make public land valuable for public recreational purposes available to the general public, rather than for disposition for private uses. Roscoe T. Schafer, A-28131 (August 27, 1959). The Bureau field examination report supports the classification of the land as not being proper for disposal under the public sale law. The population pressures of

RO

nearby San Jose and the public use potential inherent in the lands indicate that they should be retained in public ownership for interim balanced resource management, and possible eventual transfer to an appropriate State or local governmental body for more intensive recreational-use management. More detailed classification studies will determine the propriety of access provision and classification of the public lands in the area either for retention under section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1958 ed., 315f), as a land managment area, or for transfer to a public agency under an appropriate law. In any respect the public interest is better served by assuring general public use of this type of lands, rather than selling the lands to individual members of the public.

Moreover, the field examination report shows the sale of the various parcels of public lands in the area pursuant to the applications named in the Manager's decision, would result in an undesirable public land pattern consisting of a residue of isolated parcels of public lands which would be too small to be effectively administered for grazing or hunting purposes, and would create a problem as to the disposition of such remaining lands. In administering the sale of public lands, we must consider whether the particular disposition applied for would be in the public interest. The Departmental decision, Lambert A. Bartnick, A-27316 (June 7, 1956), held that the public interest is not served when the disposition of certain subdivisions creates problems in the disposition of the remainder of the public land in the area. See Orie W. Robinson, A-27609 (July 22, 1958). The public lands in this area should be retained for their present uses until it is determined that disposition of a particular subdivision will not interfere with the plans for the balance of the public lands in the area.

The question is one of proper classification of the lands, and in light of the record, the appellant has the burden of submitting positive and substantial evidence showing the classification of the lands is erroneous. Orie W. Robison, supra. The appellant has not made a showing which would warrant changing the present classification of the lands in issue.

Accordingly, for the reasons stated, the decision of the Manager is affirmed.

Mr. Merle A. Gomes is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Forms 4-1365 and 4-1429. If an appeal is taken, the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

Appeals Officer

Enclosures (2)

DISTRIBUTION:

Mr. Merle A. Gomes (Certified Mail)
Lands Staff Officer
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DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAY 1 10 00 AM 1961
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 059136
5.04g

DOCKET FILES

March 1, 1961

Certified Mail
Return Receipt Requested

DECISION

Maria Dekker	:	Public Sale Application
	:	
	:	

Decision Affirmed

Maria Dekker has appealed from a decision dated September 19, 1960, rejecting her public sale application for the stated reasons that the land involved could not be appraised with confidence as to accuracy because of unstable land values, and the land use is changing from agriculture to recreation since the land is situated directly east of the main entrance to Sequoia National Park.

The record shows that after the decision appealed from was rendered the land in question was classified on November 1, 1960, as proper for retention in public ownership for multiple use including recreation in connection with nearby Terminus Dam and Reservoir, watershed management, and power production.

In her appeal the appellant states that she purchased an adjacent 80-acre tract of land to which she has no access and is unable to obtain a right-of-way. She alleges that the acquisition of all or part of the land embraced in her public sale application would give her access to the tract she bought. However, she has presented no positive and substantial evidence of any error in the classification of the land which would warrant a change in the decision appealed from. Accordingly, the decision is affirmed as herein modified.

Mrs. Dekker is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. A $5.00 filing fee is required if an appeal is taken. In taking an appeal there must be strict compliance with the regulations.

A. H. [illegible]
Appeals Officer

Enclosure

Distribution on page 2

DISTRIBUTION:

Maria Dekker (Certified Mail)
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LO(Sacramento) - 1 copy
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SACRAMENTO, CALIF.

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IN REPLY REFER TO:

Sacramento 051790
6.05c
Public Sale Appln.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

DEPT. OF INTERIOR
SACRAMENTO, CAL.
AUG 4 2 12 PM 1961
BUREAU OF
LAND MANAGEMENT

JUL 31 1961

Certified Mail
Return Receipt Requested

	DECISION	Appeal from Decision of
William L. Pattillos	:	March 13, 1961
	:	Notice of Appeal filed
	Appeal Dismissed	April 13, 1961

For the reason listed below your appeal to the Director, Bureau of Land Management, is hereby summarily dismissed (43 CFR 221.98):

☒ No statement of reasons has been filed in support of the appeal, and the time for filing the statement has expired. (43 CFR 221.3).

☐ Your statement of reasons for your appeal (or your request for extension of time to file a statement of reasons) was filed in this office, but it was filed late. (43 CFR 221.3). The statement of reasons was transmitted to this office after expiration of the period allowed, and the delay in filing cannot be waived. (43 CFR 221.92(b)).

☒ You have not served the adverse party named in the decision below with a copy of ☒ the notice of appeal, and/or ☐ the statement of reasons for the appeal, in the manner prescribed in 43 CFR 221.95. (43 CFR 221.4).

☐ Your appeal does not point out wherein the decision appealed from is believed to be in error and consequently you have failed to state reasons for the appeal, as required by the rules of practice. See Duncan Miller, 65 I.D. 292.

The dismissal of an appeal for failure to comply with the above requirements is mandatory. We have enclosed Form 4-1364 which contains the cited regulations.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 4-1365.1/ If you do not appeal we will close the case and return the record to our State Supervisor for further appropriate action. If an appeal is taken the amount of the filing fee is $5.00. In taking an appeal there must be strict compliance with the regulations.

(Sgd.) John B. Piccolo

~~Director~~
ACTING Chief, Division of Appeals

Enclosures 2

1/ The adverse ~~party~~ parties to be served ~~is~~ are:
Nicholas Marunich, C/o Gilmore & Gilmore, Attorneys at Law, 301 Crocker-Anglo Bank Bldg., Sacramento 14, California
Administrator, Estate of Emily Giunti, C/o Mr. Martin C. Baer, Attorney at Law, 484 Main St., Placerville, Calif.
Minnie M. Bragg, Rt. 3, Box 3326 Auburn, Calif.

64431

Copy to: Adverse Parties
SD (California)
LO (Sacramento) ✓

DEPT OF INTERIOR
SACRAMENTO, CAL.
AUG 4 2 12 PM 1961
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

DEPT. OF INTERIOR
SACRAMENTO, CAL.

APR 24 10 00 AM 1961

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:

Arizona 017113
Los Angeles 0122810, etc.
Sacramento 055145, etc.
Nevada 056374
5.04g

DOCKET FILES

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 3, 1961

DECISION

Perley M. Lewis *et al.*	:	Public Sale Applications

Cases Remanded

Mr. Perley Lewis, and the other parties listed in the Appendix have appealed from decisions which in accordance with standards established by the Secretary of the Interior on February 5, and February 23, 1960, rejected their public sale applications.

On February 14, 1961, the Department promulgated a land conservation program superseding the previous pronouncements mentioned above.

Accordingly, the cases are remanded for appropriate consideration in the light of the Department's land conservation program of February 14, 1961.

Appeals Officer

DISTRIBUTION:

Each applicant listed in Appendix (Regular Mail)
Francis N. Crawford, Attorney (Regular Mail)
Hon. Edgar W. Hiestand, Member of Congress
AA-1
AA-2
SS (California) (Arizona) (Nevada)
LO (Los Angeles) (Sacramento) (Phoenix) (Reno)
Lands Staff Officer
Case Files
Permanent File
AO Reading File
Attorney's Reading File
MG

APPENDIX

Serial Number	Applicant
Arizona 017113	Perley M. Lewis
Arizona 017448	Perley M. Lewis
Los Angeles 0122810	Michael Signorelli
Los Angeles 0143417	Pinyon Crest, Inc.
Los Angeles 0144875	Lloyd Rooke
Los Angeles 0145939	Allmore Stanley Aaron
Los Angeles 0146465	Asa Zaccheus Wilson
Los Angeles 0152268	Eldorado Properties, Limited
Los Angeles 0152849	Harold Ladd Pierce
Los Angeles 0154711	Harold Glenn Webster
Los Angeles 0164076	Clarence E. and Anna L. Goodrich
Sacramento 055145 ✓	Ernest L. Pavese
" " ✓	Ernest Magincalda
Sacramento 058294 ✓	George K. Brokaw
Sacramento 059017 ✓	Ernest Pavese
Nevada 056374	Bernardo and Elisa Ricci

20

In reply refer to:

Sacramento PS 059820
5.04g

DEPT. OF INTERIOR
SACRAMENTO, CAL.

APR 24 10 00 AM 1961

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DOCKET FILES

April 14, 1961

DECISION

James E. Haldan : Public Sale Application

Decision Vacated
Case Remanded

James E. Haldan has appealed from the decision of the Bureau, dated January 11, 1961, affirming the decision of the Land Office, dated August 2, 1960, which in accordance with standards established by the Secretary of the Interior on February 23, 1960, rejected his public sale application.

On February 14, 1961, the Department promulgated a land conservation program superseding the prior pronouncements mentioned above.

Accordingly, the Bureau's decision of January 11, 1961, is vacated and the case record is remanded through the Bureau's State Supervisor for Nevada for appropriate consideration in light of the Department's land conservation program of February 14, 1961.

Appeals Officer

DISTRIBUTION:

James E. Haldan, (Regular Mail)
Jonas, Matthews & Pfotenhauer, Attorneys for Appellant (Regular Mail)
Lands Staff Officer
AA-1
SS (California)
LO (Sacramento) ✓
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

[illegible]
[illegible]

April 14, 1962

Certified Mail
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DECISION

Keith N. Clark	:	Public Sale Application
Robert E. Choate	:	Valentine Scrip Application

Decision Rejecting Public Sale Application Affirmed
Valentine Scrip Application Rejected

Keith N. Clark has appealed from a decision dated June 28, 1960, rejecting his public sale application for the reason that the land applied for contains merchantable timber and that the public interest would best be served by retaining the land in Federal ownership for timber management purposes.

A conflicting Valentine scrip application, Sacramento 060870, has been forwarded to this office for consideration in connection with Mr. Clark's appeal. This application, filed by Robert E. Choate, Jr., Joan L. Choate, and Daniel E. Morton, embraces several of the subdivisions included in the public sale application. The merits of this application have been carefully reviewed along with the merits of the public sale application.

Both the public sale and scrip applications have been filed for lands in T. 11½ N., R. 5 E., H.M., California. This land lies in an area having a demonstrated need and potential for the development of public recreation sites. Two such sites, [illegible] and King's Camp, are now under consideration.

The highest and best use for the public domain in this area is for use in developing recreational and public use sites in appropriate locations. The Bureau is implementing programs to study the lands involved and determine the best means for accomplishing this objective.

Consequently, it would not be in the public interest to transfer title to any of the lands involved until it is determined that this objective is being achieved by the proposed transfer.

The subject transfers do not further this objective. The decision of the Manager rejecting the public sale application is, therefore, affirmed, and the Valentine scrip application is rejected.

Mr. Clark and the Valentine scrip applicants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

In the event an appeal is taken by Mr. Clark, then the adverse parties to be served are Robert B. Choate, Jr., Jean B. Choate, and Daniel F. Norton. Service on them may be effected by serving their attorneys McCutchen, Doyle, Brown & Enersen, 1500 Balfour Building, 351 California Street, San Francisco 4, California. If the scrip applicants take an appeal, then the adverse party to be served by them is Keith M. Clark, Route 2, Box 558, Hillsboro, Oregon.

Appeals Officer

Enclosure

DISTRIBUTION:

Mr. Keith M. Clark (Certified Mail)
Robert B. Choate, Jr., Jean B. Choate, Daniel F. Norton (Regular Mail)
McCutchen, Doyle, Brown and Enersen, Attorneys at Law (Certified Mail)
Mr. Stephen B. Robe (Regular Mail)
~~[illegible] (Regular Mail)~~
Mr. Frank Gorbet (Regular Mail)
Huber and Goodwin, Attorneys at Law (Regular Mail)
Lands Staff Officer
[illegible]
SS (California)
LO (Sacramento)
Case File
[illegible]
[illegible]
[illegible]

appeal to Sec
affirmed A 29093 to Dec
4-25-63

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DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 046796
6.05c

May 31, 1961

Certified Mail
Return Receipt Requested

DECISION

John H. Erasmy : Public Sale Application

Decision Affirmed

John H. Erasmy has appealed from the Land Office decision, dated January 25, 1961, which rejected his amended public sale application for the NW¼ Sec. 31, T. 11 N. R. 4 W., M.D.M., California. The reason for rejection was that the lands involved have been classified as "key lands" that control access to a large block of public domain lands which are valuable for hunting and other recreation uses by the general public and the disposal of which would not be in the public interest.

The appellant alleges that the sale of the 80 acre tract for which he had originally applied, namely, the W½ of Sec. 31, would in no way interfere with access to the Government lands.

The Department has held that public sale applications are properly rejected where the land sought is an essential means of public access to other public lands. Cf. Lafayette M. Hughes, A-27213 (December 28, 1955).

The appellant has submitted no positive and substantial evidence to show that the classification of the lands is in error. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

Accordingly, the application was properly rejected and the decision appealed from is affirmed.

John H. Erasmy is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

John B. Piccolo
Acting Appeals Officer

Enclosure

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SACRAMENTO, CAL.

JUN 19 10 00 AM 196

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LAND MANAGEMENT
LAND OFFICE

In reply refer to:

Sacramento 061960
6.05c

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 6, 1961

Certified Mail
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DECISION

Dorothy L. Benteen	:	Public Sale

Decision Affirmed

Dorothy L. Benteen has appealed from the decision of the Land Office, dated October 11, 1960, which rejected her application for the public sale of a tract of land containing approximately 1.7 acres, for the reason that the land is in a mineralized area appropriated under the mining laws and in order to delineate the public domain portions of this area it would be necessary to survey and draft a complicated supplemental plat.

The appellant does not refute the accuracy of the above holding but alleges that her application should be allowed to hold its place for future action. On February 14, 1961, the Department announced a new land conservation program under which sales or other dispositions of public lands may be made where it is shown that the sale or other disposition will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and improving the administration of the public lands. The sale of the land in this instance would not serve a sound public purpose.

In cases of this type, the difficulty and the expense of segregating the mineralized from the non-mineralized lands and the cost of a survey, militates against a classification of the lands for public sale, Cf. Joseph F. Hoffman, et al., Arizona 06283, etc. (April 3, 1959). Moreover, it would be against the public interest to spend more for segregating and classifying such land than it would probably bring at a public auction.

Accordingly, the decision is affirmed.

Dorothy L. Benteen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

John B. Piccolo
Acting Appeals Officer

Enclosure

DISTRIBUTION:

Dorothy L. Benteen (Regular Mail)
H. S. Gilmore, Gilmore & Gilmore, Attorneys at Law (Certified Mail)
SD (California)
LO (Sacramento)
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Appeal to Sec
affirmed A-29324 - 11-26-63

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 057773

DOCKET FILES

November 3, 1961

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LAND OFFICE

APPEAL TO THE SECRETARY

Certified Mail
Return Receipt Requested

DECISION

Joseph Garcia, Appellant :
: Public Sale
Cholame Township Sportsmen's :
Association, Protestant :

Decision Affirmed
Protest Dismissed

Joseph Garcia has appealed from a decision of the Manager, dated March 13, 1961, which declared Arthur E. Ehrenpfort purchaser of a tract of public domain land offered for sale at public auction pursuant to an application filed under the 2nd proviso of the Public Sale Act of June 28, 1934, as amended (43 U.S.C. 1171), subject to the furnishing of evidence of payment to the appellant of $25.00 for range improvements and the cancellation of an existing section 15 grazing lease held by Mr. Garcia.

On appeal, the appellant contends that the sale is a nullity because notices of the proceedings were sent to the wrong address and as a result prevented him from exerting his preference right to purchase. He further asserts that the value placed on the range improvements ($25.00) is insufficient because he has actually expended in improvements and maintenance a total of $475.00. He further requests that a hearing be held on the matters here involved.

A report of field examination contained in the record reveals that the range improvements are presently in an extreme state of disrepair, and consist of some rusted pipe and a stock tank at the site of the spring. The present value of the improvements is estimated to be $25.00. Several years ago the lessee acquired 150 feet of plastic hose to partially repair the installation. The 150 feet of hose was hanging in a tree adjacent to the tank on the date that the field examination was conducted.

The record further reveals that notice of the proposed disposal classification of the tract embraced in Mr. Garcia's grazing lease was sent to him by certified mail on December 3, 1959, and that he protested the action

Mailed [illegible]

taken and asserted his right to purchase the tract by letter dated December 22, 1959. His protest was dismissed by decision of the Land Office, dated October 11, 1960, and thereafter, the decision, dated November 23, 1960, by which the sale was ordered was also sent to Mr. Garcia. Pursuant to this decision, notice of the sale was published in the "Midway Driller," a daily newspaper at Taft, California, weekly for five consecutive weeks prior to January 31, 1961, the date of the sale. The decision of the Land Office, dated January 31, 1961, declaring Mr. Ehrenpfort the high bidder, also allowed 30 days for contiguous land owners to exercise their preference rights to purchase. Mr. Garcia was sent a copy of this decision. The record reveals that except for the original notice of the proposed disposal classification, all decisions and notices were sent to Mr. Garcia at the Bakersfield, California, address, but none were returned as unclaimed by the Post Office. However, it is noted in this connection that there is no specific statutory requirement that such direct notice of a proposed public sale be given to anyone. The applicable statute authorizes the Secretary to order the sale of tracts mountainous or too rough for cultivation "after at least thirty days' notice by the land office of the district in which such land may be situated." (43 U.S.C. 1171) There can be no question that the "thirty days' notice" referred to means notice by publication and posting. Cf. 43 CFR 250.9. There is no requirement in the Department's regulations, other than notice by publication and posting, that direct, personal notice of any subsequent action must be given to potentially interested parties. Accordingly, it is held that the alleged failure to give direct, personal notice of the sale or actions relating thereto to the appellant did not infringe any legal right of the appellant or violate any law or regulation, and consequently, does not cast any doubt on the validity of the sale. Cf. Henry Petz et al., 63 I.D. 33 (1955).

The appellant has offered no evidence to support his statement that the value of the improvements is more than that shown in the report of field examination. The Department has consistently held that mere statements of an appellant are insufficient to refute the findings contained in a field report of the Bureau properly conducted in accordance with established Bureau practices.

It is also well established that a hearing will be granted only when there is a reasonable liklihood that it would develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957). The record in this case is sufficient to decide the issues involved and the appellant has submitted no evidence to the contrary. Therefore, the request for a hearing is denied.

The Manager's decision is affirmed. The appellant's deposit of $20.00 for a hearing will be refunded in due course.

A protest against the subject sale was filed with the Director, Bureau of Land Management, by Will J. Erickson, President, and Ian I. McMillan, Conservation Chairman, Cholame Township Sportsmen's Association, respectively. The contentions, allegations and assertions contained in said protest have been carefully considered, but nothing has been offered to refute the findings of the Bureau or warrant the altering of the conclusions reached herein. Accordingly, the protest is hereby dismissed.

Joseph Garcia and the protestants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. There must necessarily be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served is:

Arthur E. Ehrenpfort
1778 San Luis Drive
San Luis Obispo, California

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Peter R. Andre, Esq, Attorney for Appellant (Certified Mail)
Joseph Garcia (Regular Mail)
Arthur E. Ehrenpfort (Regular Mail)
Hon. Charles E. Teague (Regular Mail)
Cholame Township Sportsmen's Association (Certified Mail)
SD (Sacramento)
LO (Sacramento)
Case File
Permanent File
Attorneys' Reading File
Appeals Reading File
JJS

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

6.05c
Sacramento 052523, etc. 1/

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DECISION

November 28, 1961

Harry W. James *et al.* 1/ : Public Sale Applications
: Indian Allotment Application

Manager's Decision Affirmed

Mr. Harry W. James and the five other parties listed in the attached appendix have appealed from the Manager's decision of Febraury 28, 1961, which rejected their various applications for public lands which are located within this Bureau's "Humboldt, Del Norte, Mendocino, Trinity County Public Land Management Area". 1/ The reasons stated for the rejections are that it is in the public interest to retain the lands in Federal ownership as they are valuable for administration for balanced uses including watershed management, timber management, wildlife conservation, public recreation, and livestock grazing; and that the lands may be used or selected as base in state indemnity selections or exchanges or in scrip applications.

The appellants contend primarily that they should be entitled to acquire the lands involved for reasons relating to their own needs and uses, such as for enlarging ranch and stockwater lands, for acquiring the timber to carry on a lumber business, and for raising fruit and walnut trees and building a home. Several appellants claim that the particular tract they desire is surrounded by private lands and has no public access and that public use of such land is not feasible and/or that conservation of the natural resources and wildlife can be and is carried out by private parties. The Witters and Mrs. Gillette indicate that they initiated action with the Federal Power Commission which led to the restoration of the lands involved for entry. This action, however, did not give them any preference right of entry or assurance that the land would be classified for disposal. Cf. Alma Everett Morris, Jr., et al., A-27235 (December 12, 1955).

1/ The names of the appellants and the serial number of their respective applications are listed in the appendix. The applications are all for the public sale of the lands except that of Dorothy Darlene Brown Anderson (Sacramento 062888) which is for an Indian Allotment.

Classification of these lands for public sale or for an Indian allotment by the Secretary or his representatives pursuant to Section 7 of the Taylor Grazing Act (43 U.S.C., 1958 ed., sec. 315f) is discretionary. The Secretary announced on February 14, 1961, in his Public Land Conservation Program that classification of lands for disposal under the public land laws must meet the test of serving the public interest. The Manager's decision outlined the reasons for retaining the lands in public ownership. These reasons are more compelling than those offered by the appellants for disposal of the lands. It is determined that the public interest can best be served at this time by retaining the lands in Federal ownership to be managed for the uses stated in the Manager's decision and for future use or exchange in the implementation of public land and recreation programs of this Department.

Accordingly, as the appellants have failed to show by any positive or substantial evidence that it is in the public interest to classify the particular lands involved for public sale or for acquisition as an Indian allotment, the Manager's decision is affirmed. Cf. Garfield Taylor, A-28205 (April 26, 1960); Roscoe T. Schafer, A-28131 (August 27, 1959); Randall Storey, A-27573 (September 22, 1958); Lillian Shermoen, A-28119 (January 15, 1960).

Each appellant listed on the appendix is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Each appellant listed in the Appendix (Certified Mail)
Gilmore & Gilmore, Attorneys for the Witters and Mrs. Gillette (Certified Mail)
Chief, Division of Lands & Recreation
SD (California)
LO (Sacramento)
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APPENDIX

Appellant		Sacramento Serial Number	
Mr. Harry H. James P. O. Box 613 Garberville, California	Closed 3-11-64	052523	appeal to Sec
McIntosh Lumber Company Blue Lake, California		052948	
Mr. John J. Hansen RFD Box 604 Fortuna, California		052975	
Mrs. Ester M. Snethen 8214 Chantry Street Fontana, California		059340	
Mr. Dean Witter, Jr., Mr. William D. Witter & Mrs. Ann W. Gillette by Edmond S. Gillette, Jr. c/o Gilmore & Gilmore Attorneys at Law 301 Crocker-Anglo Bank Building Sacramento 14, California		053691	Closed 3-26-6 Partial rej.
Mrs. Dorothy Darlene Brown Anderson Star Route Carlotta, California		062888	Closed 3-11-64 appeal to Sec

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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 050665

December 18, 1961

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DECISION

Frank J. and Rose J. Souza : Public Sale Application

Decision Affirmed

Frank J. and Rose J. Souza have appealed from a decision of the Manager, dated September 14, 1961, rejecting their public sale application. The Manager held that it would not be in the public interest to sell the applied for land at this time because it is located only one-half mile south of the historical Mother Lode town of Columbia which is a State Park, and it has been determined that the land should remain in Federal ownership pending a determination of its values, mainly its recreational value. The Manager also held that the land has special attractiveness for private development and should be held as trading stock to secure privately held lands having public values.

In their appeal, the applicants assert that there is little likelihood that the land will ever be annexed to the State Park as they have talked with the Park's officials who informed them that the State did not have sufficient money to develop the park land it already owns. They state they are against trading the land to private parties since this might result in transferring the land to a privileged person. They assert they have invested about $2.500 in purchasing the mining claims covering the lands and were **persuaded** to give them up when they filed their public sale application.

The Bureau's conservation program for the National Land Reserve provides, in part, that sales of public lands will not be made unless a sound public purpose will be served thereby, including the satisfaction of the bona fide needs of the general economy and improving the administration of the remaining public lands. In the instant case, it has been determined that the sale of the land applied for would not be consistent with this program.

The land in question has been examined and it has been determined that its sale at this time would not be in the public interest in view of its proximity to an area intensively used for recreational purposes. Even though it may subsequently be determined that it would not be feasible to develop this specific tract for public uses, due to the intense demand for lands similar to the subject land, it can readily be exchanged for private land which would be more suitable to develop and administer as a public use area.

The appellants' contentions have been duly considered; however, the mere act of filing an application for the land did not vest in them any right or interest in the land, nor does the fact that they may have purchased and subsequently relinquished mining claims covering the land require that it be sold to them at public auction. In view of the Bureau's classification of the land, the appellants' were required to show that it would be in the public interest to sell the subject land to them. In the absence of such a showing, the classification of the land will not be changed.

Accordingly, the decision of the Manager is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

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Bureau of Land Management
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In reply refer to:
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Sacramento 062924

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December 19, 1961

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DECISION

Walter C. Drysdale
Fred G. DeBerry
Eugene Chappie
Evelyn Horn

: Public Sale Application

Decision Affirmed

The above-named applicants have appealed from a decision, dated September 21, 1961, which rejected their application for public sale because the subject land has been classified as not proper to be ordered into the market at public auction under the Public Sale Act, because (1) disposition of the land would lead to only partial title transfer of vacant public land in National Land Reserve in the immediate area and would therefore fragment the Federal holdings and piecemeal the disposition of remaining isolated portions, and (2) a report from the United States Geological Survey indicates that the land has possible mineral value in gold and chromite.

The regulation 43 CFR 250.8, provides that mineral lands may not be sold except under specific statutory authority wherein applicants must comply with the appropriate requirements whenever an application is filed for land, withdrawn, classified, or valuable for such minerals. Generally, only lands containing leasable minerals such as oil and gas, coal, etc, may be sold, in which case such minerals are reserved to the United States.

Appellants state that they have held the subject tract of land by quartz mining locations for the past several years and have performed considerable excavation for the required annual assessment work but have not, as yet, found any mineral value. This assertion, however, is insufficient to establish that the land in question is not mineral in character. Nor do the appellants otherwise show that the classification of the land as not suitable for disposal is in error. In order to make a sufficient showing that the classification is erroneous, nothing short of positive and substantial evidence is acceptable. This includes the submission of expert testimony as deemed necessary. Therefore, the classification will not be disturbed. Cf. Lawerence R. Aker, A-27815 (February 13, 1959).

Accordingly, the decision appealed from is affirmed.

The above-named applicants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

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Walter C. Drysdale, Fred G. DeBerry, Eugene Chappie, Evelyn Horn (Certified Mail)
Chief, Division of Lands and Recreation.
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LAND OFFICE

In reply refer to:

Sacramento 062577
6.05c

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 21, 1961

Certified Mail
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DECISION

Dr. Frank W. Gorham : Public Sale Application

Decision Affirmed

Dr. Frank W. Gorham has appealed from a decision dated June 13, 1961, which rejected his public sale application. The decision held that allowance of the application would split one large and one small block of the national land reserve into three isolated tracts, two of which are 40 acres or less in area, and would tend to devaluate the remainder and make it less manageable. The decision noted further that the State Department of Fish and Game requested that the lands be retained in Federal ownership for multiple use management.

The appellant contends that the lands would be managed better in private ownership. He states (1) motorcycle riders are making a playground of the area and causing terrible erosion; (2) sites in the area are ideal for stockwater wells and irrigation wells and his intention is to develop them and thereby enhance the tax value of the lands; (3) the area is almost without vegetation, except for spring annuals, and the game population is almost negligible; and (4) continued government ownership will result in further depreciation of value due to the depredation mentioned and erosion.

The appellant's unsupported statements are insufficient to warrant any change in the classification of the lands. The record supports the ruling in the decision appealed from that the lands are properly retained in Federal ownership for the reasons stated. In the absence of substantial evidence that this classification is in error, the classification will not be disturbed. Cf. *Harold B. Anderson, Jr., et al.*, A-28066 (November 20, 1959).

Accordingly, the decision appealed from is affirmed.

Dr. Frank W. Gorham is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Dr. Frank W. Gorham (Certified Mail)
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Sacramento 065687

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DOCKET FILES

December 21, 1961

Certified Mail
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DECISION

Richard and Alta M. Beckert : Public Sale

Decision Affirmed

The above-named parties have appealed from a decision dated June 12, 1961, which rejected their public sale application for the reason that the land applied for was a part of a larger block of public domain and disposal of this tract would result in piecemeal disposal and would tend to devaluate the remainder.

The appellants state they would be willing to purchase the remainder of the public lands in the section. This would be tantamount to the allowance of a new application which cannot be permitted under the terms of the moratorium announced by the Department on February 14, 1961.

Refusal to classify lands for disposal is in conformity with the present land conservation policies of the Department which provides in pertinent part that leases, sales or other disposition of public land shall not be made unless such disposition serves a sound public purpose. Sale of the land in question would not be in the public interest.

Accordingly, the decision appealed from is affirmed.

Richard and Alta M. Beckert are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

Sacramento 065687

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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

December 27, 1961

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DECISION

G. Walter and
Avis E. Spencer

: Public Sale Application

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, Sacramento Land Office, dated October 6, 1961, rejecting their above-identified public sale application for the reason that the land has been classified for retention in Federal ownership and not suitable to be ordered into the market at public auction.

The decision was based on a field examination report indicating that the land is located approximately six miles east from the town of Covelo, lying one-quarter mile east of the Eel River's middle fork, a location contemplated to create the Etsel Reservoir by the State of California for construction of a dam. The proximity of the subject land to such a large body of water would enhance its value for recreation and public purposes.

The appellants state that the land is high atop a rugged and inaccessible mountain located in the center of their 380 acres. There is no spring or water on it. It is mostly rocky, not even good grazing land. They state further that their only object is to protect their own property that if a road were cut through a portion of their acreage it would cause a hazard and subject them to cost in order to have constant patrol and watch from outsiders.

Public land valuable for public recreational purposes will be made available to the general public, rather than for disposition for private uses. Roscoe T. Schafer, A-28131 (August 27, 1959). The Bureau Field Examination report supports the classification of the land as not being proper for disposal under the public sales law. The appellants have not presented any persuasive arguments or positive or substantial evidence that the classification of the land is in error, and the classification will not be disturbed. Cf. Mary Refugio Jackson et al, A-27236 etc. (February 29, 1956).

Accordingly, the Manager's decision is affirmed. As to the appellants proposition that they should be at least permitted to lease the land for another ten years, the appellants may file an application for a lease at the proper office.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 21, 1961

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DECISION

Curtis A. Patterson : Public Sale Application

Decision Affirmed

Mr. Curtis A. Patterson has appealed from a decision dated September 10, 1961, rejecting his above-identified public sale application for the reasons that (1) transfer of title of the land would result in the fragmenting of a block of national land reserve and would intensify existing management problems; (2) the Geological Survey reports that the land may be valuable for gold, silver, copper and chromium. A number of patented lode claims lie close by and a mining claimant has filed a protest against the application as it conflicts with his mining claim; and (3) section 12 which adjoins the subject land in its south boundary was resurveyed by the cadastral engineers in 1928 who found the south line of section 1 (which coincides with the north line of section 12) varies approximately 6½ degrees in bearing from the original survey. In order to retrace section 1 and determine the boundaries of the land applied for, a survey costing several thousand dollars would be required.

The appellant states as to item (1) that he owns the land on three sides of the subject land and so far as he can determine there are no Government parcels within a close proximity. As to item (2) he states that he has been in possession of land in this area since 1927, and at no time has there been a successful mining operation developed in the area; and as to item (3) he states in effect that no retracing of the boundaries of sections 12 and 1 are required.

The public sale regulations of the Department provide that mineral lands may not be sold at public auction except under specific statutory authority which exists for the sale of lands valuable for certain minerals with a reservation of these minerals to the United States. (43 CFR 1954 ed., 250.8.) Lands valuable for gold, silver, copper and chromium are not within the class of lands salable with an appropriate reservation. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959). The appellant's unsupported statement to the effect that no successful mining operations have been conducted on the land in question does not necessarily mean that the lands are not valuable for the minerals indicated in the Geological Survey report. Moreover, the appellant has submitted no positive and substantial evidence that classification of the lands as unsuitable for disposal by public sale is erroneous. An applicant for public lands who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. Anderson O. Whitener, A-27626, (December 3, 1958). No such showing having been made, the classification will not be disturbed. Mary Refugio Jackson, et al., A-27236 etc. (February 29, 1956). Furthermore, the present land conservation program of the Bureau provides, in part, that sales, leases, and other dispositions of public lands will not be made unless a sound public purpose will be served thereby, including the satisfaction of bona fide needs of the general economy and the improvement of the administration of the public lands. In the instant case, the record shows that the time and expense necessary to examine, classify and conduct a public sale of the applied for land would be out of proportion to any benefits which might accrue either to the Federal Government or the local economy. Hence, the sale of the land would not be consistent with the Bureau's above-mentioned land conservation program.

Accordingly, the decision appealed from is affirmed.

Mr. Patterson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
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Dec. 29, 1961

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DECISION

Lloyd E. Cox	:	Public Sale

Decision Affirmed as Modified

The above-named party has appealed from a decision dated July 20, 1961, rejecting his above-identified public sale application.

A public sale application is, in fact, merely a petition to the Secretary of the Interior to have certain lands offered at public sale. The petition serves to give notice of interest. The Secretary has authority to offer lands pursuant to a petition or on his own motion.

In the present case, the filing of the application has served its basic purpose of notifying this Bureau of the interest of Mr. Cox and the problem relating to the location of his improvements. This Bureau will study carefully the possibility of offering the lands at public auction or finding an alternate appropriate means to solve the problem or question.

Therefore, that part of the Manager's decision rejecting the subject application is allowed to stand, since the application must be rejected on the technical grounds that it does not properly describe a legal subdivision of the public lands. The State Director for California will nevertheless initiate steps promptly to see whether an adequate solution can be found for the problem presented herein. Mr. Cox will be kept informed.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

H.R. Hochmuth

Acting Director

Enclosure

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DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Dec. 29, 1961

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DECISION

John Roger Almklov and Nathan Meadoff : Public Sale Application

Decision Affirmed

4653

The above-named parties have appealed from a decision of the Manager, Sacramento Land Office, dated September 12, 1961 rejecting their application Sacramento 059321 filed July 10, 1959 to have certain land ordered into market at public auction pursuant to the Public Sales Act, as amended (43 U.S.C., 1958 ed., sec. 1171). The application was rejected on the basis of land classification that the best interests of both the public and the government would be served by retaining the land in federal ownership pending an assured supply of additional irrigation water from outside sources.

The decision was based on a Bureau field examination report which shows the subject land is located in the southern San Joaquin Valley in the Edison-Maricopa Area; an area of deficient ground water and declining water tables. The report also states that allowance of the subject application would be inconsistent with national agricultural policy in tending to encourage production of surplus crops in a water deficient area; and that the land be placed in residual status for management pending an assured supply of additional irrigation water from outside sources.

The appellants state that it is their intention to use this land not for the raising of crops, but as a storage basin for waste water that comes of their land. This is a conservative measure since the water could then be pumped back in a distribution system and reused to irrigate crops. At this time, not only is the water wasted, but also a mosquito nuisance is created.

The question in issue is one of proper classification. The Bureau field examination report supports the classification of the land as not being proper for disposal under the public sales law The appellant has not presented any persuasive arguments or substantial evidence that the classification of the land is in error. The land has value in reference to water conservation. Refusal to classify the land for public sale is in conformity with the present land conservation program, which provides in part, that sales or other disposition of public lands will not be made unless such disposition will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and improving the administration of the public lands. The Manager's decision outlined the reasons for retaining the lands in public ownership. These reasons are more compelling than those offered by the appellants for disposal of the lands. It is determined that the public interest can best be served at this time by retaining the lands in federal ownership.

Accordingly, the decision of the Manager is affirmed.

John Roger Almklov and Nathan Meadoff are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

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Sacramento 053839 058790
053886 059323
054114 060038
054503 060374
055720 060780
057641 063686
058789

January 26, 1962

DECISION

John Edward Oblizalo et al. : Small Tracts, Homestead and Public Sale Applications

Decisions Vacated; Cases Remanded

John Edward Oblizalo, Samuel K. and Isabella G. Talley, and the small tract applicants named in the attached appendix have each appealed from the Manager's decision, dated November 1, 1961, rejecting their respective applications. The applications were rejected for the stated reasons that (1) it would not be in the public interest to transfer title to the lands in issue at this time, (2) such lands should be retained in Federal ownership until the area can be studied, (3) disposition of the lands will not be made until it is clear that the sale or lease will serve a sound public purpose including the satisfaction of needs of the general economy and improvement of the administration of public lands, (4) the proposed construction of Auburn Dam in the area will provide the lands with an intensive recreation potential, and (5) the area is being managed for timber production, recreation, wildlife, watershed protection and other uses.

The Bureau's State Director for California has requested that the small tract occupancy cases, listed in the appendix, be remanded to the Land Office at Sacramento, California, for further consideration. The State Director has also stated that further consideration must be given to Mr. Oblizalo's homestead application (Sacramento 057641) and the Talley public sale application (Sacramento 060374), which conflict with Mr. Sipe's small tract application.

Accordingly the Manager's decision is vacated as to that part relating to the thirteen cases, and such cases are being remanded to the Land Office Manager at Sacramento, California, through the State Director for that State, for further consideration and appropriate action.

HR Hochmuth

Acting Director

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APPENDIX

Small Tract Applicant:	Serial Number Sacramento
Miss Zoe Belieu	053839
Mr. Lawrence F. McAllister	053886
Mr. Ellard C. Schwab	054114
Mr. Roy Gray and Mrs. Zelma Alberta Gray	054503
Estate of Leona M. Werry, deceased c/o Mr. William M. Werry and Mrs. Marcella E. Smolich	055720
Mr. Claude M. Murphy	058789
Mrs. Leonore E. Murphy	058790
Mr. Charles M. Sipes	059323
Estate of Frank Yonash, deceased c/o Mrs. Ester Mary Yonash, Executrix	060038
Mrs. Elaine W. Macy	060780
Mr. Oscar E. Smith	063686

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January 26, 1962

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Bureau of Land Management
Washington 25, D. C.

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DECISION

Blake C. and Mary C. Wilbur : Public Sale Application

Decision Affirmed

The above-named parties have appealed from a decision dated September 7, 1961 rejecting their above-identified public sale application for the reason that the best interest of the public is served by retaining the land in the National Land Reserve for multiple-use management pending final classification.

The decision was based on a Bureau field examination report that the subject land lies in an area containing numerous tracts ranging from 40 acres to approximately 1,000 acres; that it is felt these tracts may be of considerable value to the government for exchange; and that the tract is traversed by a public road which enhances its usefulness in the exchange program.

The appellants state that it would be of no value for exchange because of the steep nature of the country and the fact that it is surrounded on three sides by their ranch, and is entirely inaccessible except through their property. They further state the sale would not fragment federal holdings because the land is surrounded on three sides by their land and there would be no disturbance of the local land economy.

The question in issue is one of proper classification. The Bureau field examination report supports the classification of the land as not being proper for disposal under the public sale law. The appellants have not presented any persuasive arguments or positive or substantial evidence that the classification of the land is in error and the classification will not be disturbed. Cf Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956). The land has value in reference to possible exchange and should be placed in residual status for multiple use management pending final examination for area classification.

Refusal to classify the land for public sale is in conformity with the present land conservation program, which provides in part, that sales or other disposition of public lands will not be made unless such disposition will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and improving the administration of the public lands.

Accordingly, the decision of the Manager is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221 as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5. In taking an appeal, there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

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Sacramento 048569

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Public Sale Application

JAN 29 1962

DECISION

Lon and Marvel Phillips
Taft, California

Withdrawal of Appeal ☒
Filed: October 26, 1961

Relinquishment of
Interest in Case ☐
Filed:

Appeal Dismissed

In view of the withdrawal or relinquishment noted above, the appeal to the Director, Bureau of Land Management, in this matter is dismissed. The case is returned with a copy of this decision to our State Director for further appropriate action.

(Sgd.) Richard J. McCormick

~~Chief,~~ Legal Assistant
Division of Appeals

cc:
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DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 30, 1962

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DECISION

Leroy V. and Evelyn Caughey : Public Sale Application

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, Sacramento Land Office, dated August 23, 1961 rejecting their above-identified public sale application for the reason that the land has been classified for retention in federal ownership for public recreational value.

The appellants state that the land is in the drainage of Mallo Pass and it is very steep. It has access to no public road. Construction and maintenance of any access to the property would have to be across their land. The land has been used for sheep grazing. Furthermore, they state, that due to the topography, the highest and best use would be to allow the property to be integrated into their own property since it could then be made part of their operating ranch and tree farm.

The subject land lies approximately two-thirds of a mile distant from the Pacific Ocean. U.S. Highway No. 1 comes within one fourth mile of the northwest corner of the area. A Bureau field examination report of the area indicates that the land is located in an existing recreational area generally and is within sight of the Pacific Ocean. The coast's recreation potential has not reached optimum development and the subject land does possess recreation potential.

Public land valuable for public recreational purposes will be made available to the general public, rather than for disposition for private uses. Roscoe T. Schafer, A-28131 (August 27, 1959). The Bureau field examination report supports the classification of the land as not being proper for disposal under the public sale law. The appellants have not presented any persuasive arguments or positive or substantial evidence that the classification of the land is in error, and that classification will not be disturbed. Cf Mary Refugio Jackson et al, A-27236 etc. (February 29, 1956).

The refusal to classify the land for public sale is also in conformity with the present land conservation program which provides that sales or other disposition of public lands will not be made unless such disposition will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and improving the administration of the public lands. Sale of the land in question would not be in the public interest.

Accordingly, the Manager's decision is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43CFR Part 221. as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

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A-29468 12-13-63

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
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January 30, 1962

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DECISION

John H. and Amy B. Lawrence : Public Sale Application

Decision Affirmed

The above-named parties have appealed from a decision of the Land Office, Sacramento, California, dated August 10, 1961, which rejected their public sale application because the subject lands were an integral part of a larger block of National Land Reserve and the lands were valuable for chromium and manganese which are locatable minerals. The decision also stated that the piecemeal disposition of this large block of public land would devaluate the remainder of the lands and make them less valuable.

Appellants contend, in substance, that official records of the Sacramento Land Office do not indicate that these lands are included in a National Land Reserve or any form of withdrawal; that sale of these lands would not devaluate the remainder of the lands and render them less manageable nor increase the burden of management; there has been no discovery of locatable minerals such as chromium or manganese and no basis for stating that the lands are on a geologic structure of leasable minerals and the lands applied for are under grazing lease to the appellants and are an integral part of their holdings.

Public sale regulations of the Department provide that mineral lands may not be sold at public auction except under specific statutory authority which exists for the sale of lands valuable for certain minerals with a reservation of these minerals to the United States. 43 CFR 1954 ed. 250.8. Lands valuable for chromium and manganese are locatable under the United States mining laws and are not within the class of lands saleable with an appropriate reservation. Cf. Roscoe T. Schafer A-28131 (August 27, 1959).

Executive Orders 6910 of November 26, 1934, and 6964 of February 5, 1935, withdrew all vacant public lands in the United States from appropriation or entry, including the applied for lands, within and outside of grazing districts, established under the authority of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended. The National Land Reserve is a more descriptive term used to designate these public lands. The Secretary of the Interior is authorized by Section 7 of the Taylor Grazing Act, supra, in his discretion, to examine and classify such lands for their highest use or disposal. Refusal to classify such lands for sale at public auction is within the discretionary power of the Secretary. This action is also in conformity with the present land conservation program which provides that sales or other dispositions will not be made unless it is shown that there is some compelling reason for doing so, or that such disposition will serve a sound public purpose, including the satisfaction of bona fide needs of the general economy and improving the administration of the public lands. No such showing has been made in the instant case.

As the appellants have not presented any positive or substantial evidence that the classification of the applied for lands as not proper for disposal is erroneous, the classification will not be disturbed. Cf. Lawrence R. Aker, A-27815 (February 13, 1959).

Accordingly, the decision appealed from is affirmed.

John H. and Amy B. Lawrence are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

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DECISION

Thomas H. Upton Larry L. Heath	Public Sale Application

Decision Affirmed

The above-named applicants have appealed from a decision, dated September 29, 1961, which rejected their application for public sale because the applied for tract has potential for deer hunting, grazing and recreation, and, therefore, the sale of the land would not serve a sound public purpose.

It appears from the record that the subject tract is an isolated fragment of public land, but is not suitable for disposition at public sale because to do so would interfere with the livestock operations and proper range management of adjacent federal and private lands.

Appellants assert that the clearing of the brush from the land and using the land for improved cattle feeding purposes and placing it on the local property tax rolls would serve a sound public purpose and aid the general economy by providing additional tax sources and by increasing the productivity of the land. These assertions do not, however, provide compelling reasons to change the present classification. In order to make a sufficient showing that the classification is erroneous, nothing short of positive and substantial evidence is acceptable.

Section 14 of the Taylor Grazing Act grants to the Secretary of the Interior discretion to determine whether or not public lands should be disposed of by public sale. Inasmuch as the determination has been made to retain the subject land in Federal ownership and the appellants have not shown that important issues of fact or law were not considered by the Bureau, the decision appealed from is affirmed.

The above-named applicants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

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February 5, 1962

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DECISION

George O. Bassett, M.D. :
Keith W. and Roger L. Alderman : Public Sale Applications
Howard S. Strasbaugh :
:

Decision Affirmed

The above listed appellants have appealed from the Manager's decision, dated October 27, 1961, rejecting their respective above-identified public sale applications for the stated reason that the lands named in the applications have been determined to be not suitable for ordering into the market for sale at this time.

Dr. Bassett, on appeal, asserts he owns adjoining private land, is being annoyed by persons using the public lands that he proposes be sold, and which he wishes to purchase for additional grazing purposes. Dr. Bassett states that there is no activity in connection with the mining claims embracing portions of the lands.

Messrs. Alderman and Alderman, on appeal, deny the lands they wish to purchase are not suitable for such disposition and state that much of the Manager's findings are not pertinent to the lands described in their application.

Mr. Strasbaugh, on appeal, does not refute the Manager's findings, but merely asserts that he needs the public land he proposes be sold as a site for developing a well to be used in connection with his adjoining private land and to shorten the distance to a nearby community.

The appellants have not submitted substantial, positive evidence tending to show that the Manager's decision was in error. An applicant for public lands who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. Cf. Ronald E. Pauls, A-28226 (March 29, 1960). The appellants' contentions are not an answer to the basic finding of the Manager's decision that the proposed sales at this time would not be in the public interest.

Accordingly, the Manager's decision is affirmed as to those parts relating to the rejection of the appellants' public sale applications.

Messrs. Bassett, Alderman and Alderman, and Strasbaugh, are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Forms 4-1365 and 4-1429. If an appeal is taken the amount of the filing fee will be $5 for each public sale application included in the appeal. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick
Legal Assistant
Division of Appeals

Enclosures (2)

DISTRIBUTION:

George O. Bassett, M.D. (Certified Mail)
Messrs. Keith W. and Roger L. Alderman (Certified Mail)
Mr. Howard S. Strasbaugh (Certified Mail)
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DEPT. OF INTERIOR
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In reply refer to:
6.05c
Sacramento
057430
057739
059754

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 7, 1962

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DECISION

Boyce Thompson Institute For Plant Research, Inc. : Public Sale Applications

James A. Nolan, et al., 1/ :

Decisions Affirmed

The above-named appellants have appealed from separate decisions of the Manager, dated September 26, October 17, and 18, 1961, respectively, rejecting their above-identified public sale applications for the reason that the applied for lands have been classified as improper for sale at public auction. The decisions state that the lands are required for retention in Federal ownership for timber management.

After carefully reviewing the statements of reasons submitted by the appellants in support of their appeals, it is concluded that the allegations contained therein consist merely of unsupported, self-serving assertions, completely lacking in any substantial and positive evidence to show that the classification of the lands in question as improper for sale at public auction is in error. In the circumstances, the classification will not be distrubed. Cf. Mary Refugio Jackson, et al., A-27236 (February 29, 1956).

The appellants in Sacramento 059754 state that through inadvertence they have placed improvements on the lands applied for. This is unfortunate, but it is immaterial to the classification issue raised in the appeal. The unauthorized occupancy will, however, be considered by the Land Office in due time.

Accordingly, the decisions appealed from are hereby affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each

---

1/ James A. Nolan, Harry W. Jordison, William C. Magby, Lawrence L. Erickson, Merle Jordison and Amos Jordison, Appellants.

application adversely affected by this decision. If the appeal covers all interests adversely affected, the total filing fee will be $15. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Legal Assistant
Division of Appeals

DISTRIBUTION:
Mr. Charles L. Gilmore, c/o Gilmore & Gilmore (certified mail) Agents for Appellant
Boyce Thompson Institute For Plant Research, Inc. (Regular Mail)
Mr. James A. Nolan (Certified Mail)
Mr. Harry W. Jordison (Regular Mail)
Mr. William C. Magby (Regular Mail)
Mr. Lawrence L. Erickson (Regular Mail)
Mr. Amos Jordison (Regular Mail)
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DEPT. OF INTERIOR
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In reply refer to:
6.05c
Sacramento 046884
051075
051515
057644
058134
059139

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 9, 196

DECISION

Henry J. Garibaldi et al : ~~Public Sale~~
: Small Tracts

Decision Vacated; Cases Remanded

Mr. Garibaldi and the appellants listed below [1/] have appealed from the Manager's decision, dated October 20, 1961, rejecting their respective applications for the reasons that it would not be in the best interests of the public to classify any of the lands named in the 69 applications rejected by the decision because (1) some of the lands have a recreational potential requiring that the lands be examined before any can be classified for disposition, (2) some of the lands must be surveyed, (3) some of the lands in the area have been appropriated under the mining laws, and (4) the area is being managed for multiple uses.

The appellants assert, in effect, that the tracts in issue are not the type of lands described in the decision, although such lands may be found in the area. An examination of the appeal records shows that due consideration was not given to the particular characteristics of the tracts in issue in this appeal nor the circumstances under which each application was filed. Moreover, the case records do not show that the lease phase was considered before the small tract applications in issue herein were rejected. The factual situations must be sharply distinguished as they relate to each individual applicant and tract in issue.

[1/] Mr. Henry J. Garibaldi, public sale application Sacramento 046884.
Mr. Seawell Rivers, small tract application Sacramento 051075.
Mr. Elmer V. Danielson, small tract application Sacramento 051515.
Mr. John Semas, Jr. and Mrs. Elizabeth Semas, amended public sale application Sacramento 057644.
Mr. Walter S. Shackelford and Mrs. Geneva A. Shackelford, public sale application Sacramento 058134
Mr. William J. Vorkoeper, small tract application Sacramento 059139.

Accordingly, the decision of the Manager is vacated as to those parts relating to the appellants' applications. The appellants' cases are remanded to the Land Office Manager at Sacramento, California, through the Bureau's State Director for California, for futher consideration and appropriate processing.

Richard J McCormick

Legal Assistant
Division of Appeals

DISTRIBUTION:
Gilmore & Gilmore, Agents for Mr. Garibaldi (Regular Mail)
Mr. Henry J. Garibaldi (Regular Mail)
Mr. Seawell Rivers (Regular Mail)
Mr. Elmer V. Danielson (Regular Mail)
Mr. John Semas, Jr. and Mrs. Elizabeth Semas (Regular Mail)
Mr. Walter S. Shackelford and Mrs. Geneva A. Shackelford (Regular Mail)
Mr. William J. Vorkoeper (Regular Mail)
SD (California) w/6 case files ✓
~~LO (Sacramento)~~
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In reply refer to:
6.05c
Sacramento 065961

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LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 9, 1962

DECISION

Werner Allmendinger : Public Sale

Decision Vacated in Part; Case Remanded

Mr. Werner Allmendinger has appealed from that part of the Manager's decision, dated October 27, 1961, rejecting his above-identified public sale application for the stated reason that the tract is not suitable for sale.

The decision appealed from states that all of the lands named in 71 applications rejected by it (including the application in issue) are under management for multiple uses, and that disposition of these lands would leave remaining a residue of the National Land Reserve difficult to manage. The appellant seeks to refute these findings by asserting that the land he seeks ordered into public sale consists of a narrow, U-shaped tract of approximately three acres of public land completely isolated from all other public land. Mr. Allmendinger states that he owns land on two sides of a portion of the tract and has been occupying the tract under the belief that it was part of his private lands.

The appellant states the Manager's finding that some of the lands named in the rejected application have recreation potential is not applicable to this tract, since its topography is too rough, the public has no means of access, and being too small and of an irregular narrow shape, that only an adjoining land owner could have use for it. Moreover, the appellant asserts that his investigation shows that the tract is not among the lands referred to in the Land Office decision which have been disposed of under the mining laws.

The Land Office decision states that a study is necessary of the lands in the area before such lands can be classified. The case is not now in a condition to be adjudicated. There is no specific field report by which a determination can be made of the pertinency of the appellant's assertions in connection with this appeal. An examination of the case record does not show that due consideration was given to the characteristics of the tract applied for and the circumstances under which the appellant's application was filed. Moreover, the decision appealed from fails to distinguish the factual situation and arguments applicable to this particular application.

Accordingly, the Manager's decision is vacated as it relates to the appellant's public sale application in issue. The case is remanded to the Land Office Manager at Sacramento, California, through the Bureau's State Director for California, for appropriate processing and consideration.

Richard J McCormick

Legal Assistant
Division of Appeals

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Mr. Werner Allmendinger (Regular Mail)
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Division of Lands and Recreation
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 057452

February 14, 1962

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DECISION

Edgar C. and Eleanor E. Williams	:	Public Sale Application

Decision Affirmed

The above-named parties have appealed from a decision dated August 9, 1961, rejecting their above-noted public sale application because the lands described in the application have been classified as not proper for disposal at public auction, because they are more suitable for retention in Federal ownership as a multiple-use management area in the National Land Reserve for watershed management, timber management, and public recreation, and it is in the public interest to so retain them.

The appellants contend, in substance, that they applied for the subject lands to protect their adjoining land; that the lands are not and could not be any part of a public recreation plan; that the lands are accessible only through their privately owned land; and that they desire to clean up the land to diminish the fire hazard to their privately owned adjoining property and thus to use it as additional grazing land.

Classification of these lands for public sale is discretionary with the Secretary. The Bureau's land conservation program requires that classification of lands for disposal under the public land laws must meet the test of serving the public interest. The appellants have not presented any positive or substantial evidence that the classification of the lands as not suitable for disposal at public auction is erroneous, and the classification will not be disturbed. Cf. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Accordingly, the decision appealed from is affirmed.

Edgar C. and Eleanor E. Williams are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

H. S. Gilmore, Attorney for Appellant (Certified Mail)
Edgar C. and Eleanor E. Williams (Regular Mail)
R. R. Baner (Regular Mail)
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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Los Angeles 0159288

February 16, 1962

CERTIFIED MAIL
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DECISION

Audrey H. Robinson	:	Public Sale

Decision Affirmed

Miss Audrey H. Robinson has appealed from a decision dated October 26, 1961, rejecting her above-noted public sale application. The reasons given for rejection were that, in view of the increasing needs of the community and the nation for public land, such sales or other dispositions would be premature, unwise and contrary to sound conservation practices until the area has been thoroughly analyzed and proper uses of the land determined so as to adequately protect the public interest and obtain full value for the land if it is sold. The appellant points out that her application was filed in July 1958 and that previous inaction by the Bureau was attributed to the large backlog of prior filed applications.

She argues, in substance, that the Bureau of Land Management should set down a set of rules and abide by them, and should not, at this date, reject her application based on the influx of population into the State of California at the rate of 1,000 per day with attendant increased public interest in obtaining land.

The regulation 43 CFR 1954 ed. 250.5, in effect at the time the application involved was filed, and still in effect, provides that, "until the issuance of a cash certificate, the authorized officer may at any time determine that the lands should not be sold". The mere filing of an application gives the public sale applicant no rights in the land. Roscoe T. Schafer, A-28131 (August 27, 1959). Furthermore, the appellant has submitted no positive and substantial evidence to show that the decision to retain the land in the Federal Land Reserve is in error.

Accordingly, the decision appealed from is affirmed.

Audrey H. Robinson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as

amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Miss Audrey H. Robinson (Certified Mail)
Chief, Division of Lands and Recreation
SD (California)
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appeal to Sec
ltr Decision 6-25-63
A-29497

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SACRAMENTO, CAL.
MAR 5 2 09 PM 1962
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 064184

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 20, 1962

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DECISION

Earl C. Smith and
Laura L. Smith

: Public Sale Application

Decision Affirmed

The above-named persons have appealed from a decision dated October 20, 1961, which rejected their public sale application for the reason that the applied-for lands are potentially valuable for recreational uses and the fair market value of the lands cannot be ascertained with accuracy because of the land speculation stimulated by the proposed construction of the Auburn Reservoir, only 400 feet from the subject land.

The appellant alleges since the dam is only proposed and may never be constructed, that land values are stable as evidenced by the assessed valuation for taxes, and that the lands are too rugged to be suitable for recreational uses.

The appellants' allegations are not persuasive. Self-serving and hypothetical allegations are not sufficient to controvert the classification assigned to the lands by qualified land appraisers of the Bureau. Cf. Utah-Idaho Graziers Association, Peter McKellar, A-28100 (December 22, 1959).

A public sale application is properly rejected where the applied-for land has been classified as valuable for recreational purposes. Roscoe T. Schafer, A-28131 (August 27, 1959).

Accordingly, the decision appealed from is affirmed.

Earl C. and Laura L. Smith are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick
Legal Assistant
Division of Appeals

Enclosure

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appeal to Sec LO - Sacre.
affirmed Ltr ~~Decision~~ (ltr Dec)
A-29475 - 8-1-63

DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAR 5 2 09 PM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento
060700 etc.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

~~November~~ Feb 20, 1962

DOCKET FILES

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Return Receipt Requested

DECISION

F. Heise Land & Livestock Co. : Public Sale Applications
et al. :

Decision Affirmed

F. Heise Land and Livestock Company and three others, listed in the attached appendix, have appealed from the Manager's decision, dated November 2, 1961, which rejected their public sale applications for the reason that the lands applied for are an integral part of the National Land Reserve and are not suitable for disposition under the Public Sale Act because; (1) pending the completion of the Bureau's present inventory and evaluation of the National Land Reserve, no disposition of public lands will be made unless it is clearly shown that such disposition will serve a sound public purpose; (2) transfer of title of the lands would fragment large blocks of Federal land and result in almost complete transfer of all Federal lands in the area; (3) the applied for lands are within a multiple land use area for critical deer range, expanding public recreational potential for use in connection with the heavy recreation use area of Lake Tahoe and much of the lands have merchantable timber stands which could be handled best under a sustained yield management of timber, watershed, game and range resources; (4) a detailed multiple use plan for the lands involved and adjacent Federal and privately-owned lands is being instituted; and (5) in the absence of a compelling reason to sell the lands, public interest require that they be retained in Federal ownership at the present time.

The findings in the decision appealed from are supported by the record. Furthermore, the Director of the Department of Fish and Game for the State of California states that it is necessary to retain the lands in Federal ownership for the protection of wildlife, hunting use and livestock grazing.

A careful review has been made of the joint statement of reasons submitted by the appellants in support of their appeals. It is concluded that the appellants have not presented any positive or substantial evidence that the classification is in error, and the assertions contained in their appeals consist merely of unsupported self-serving statements to the effect that their applications should be allowed at the present time, or in the alternative, the land office decision be stayed pending completion of the multiple use study and then reconsidered in light of the findings.

4-55

Section 7 of the Act of June 28, 1934 (48 Stat. 1272) as amended by the Act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 1958 ed. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn, or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto for any other use than the use provided for under said act. In exercising the discretionary authority vested in him, the Secretary, or his delegate, may properly consider and weigh all factors bearing on the suitability of the lands for use or disposal, including the effect on the public interest. Nelson A. Gerttula 64 I.D. 225 (1957).

It is apparent from the records that the lands were properly classified for retention in Federal ownership since disposing of them under the applications would not serve a sound public purpose. The mere filing of public sale applications gives the applicants no right to the land embraced in their respective application. Roscoe T. Schafer, A-28131 (Aug. 27, 1959).

Accordingly, the decision appealed from is affirmed.

Each appellant listed in the appendix is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $40. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:
George W. Abbott, Attorney for Appellants (Certified Mail)
Each Appellant listed in appendix (Regular Mail)
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LO (Sacramento)
Division of Lands and Recreation
Case File
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RLE

APPENDIX

Name and Address of Applicant	Serial Number
F. Heise Land & Livestock Co.	Sacramento 060700 ✓
Fred H. Dressler	055682 ✓
Herman W. Hellwinkel	060253 ✓ 060254 ✓
Mrs. Lloyd Springmeyer	060725 ✓ 061977 ✓ 061978 ✓ 061979 ✓

Closing 6-6

20

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 7 10 00 AM 1962
BUREAU OF
LAND MANAGEMENT
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 057578

February 21, 1962

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DECISION

Tavie D. Ralston	:	Public Sale

Decision Affirmed

The above-named party has appealed from a decision of September 27, 1961, rejecting his above-identified public sale application for the reason that the applied for land has been classified as not suitable for disposal at public auction because of its mineral character.

The appellant contends, in substance, that the land applied for is comprised of small irregular shaped tracts, part of which adjoins land owned by him; that the land is not mineral in character as prospectors determined years ago that the gold bearing veins completely missed the land and they found no ore there to warrant filing a claim, so that is why the land remains Government land.

The contentions of the appellant are without merit. The record reveals that the land in question has been examined by employees of the Bureau and it has been determined that an unpatented lode mining claim has been located on the land on which it appears a valid discovery has been made. The field examination, mineral patents, and state and United States Geological Survey publications for the area support the finding that the land is mineral in character valuable for gold.

The applicable regulation, 43 CFR 250.8 provides that mineral lands may not be sold at public auction except under specific authority which exists for the sale of lands with a reservation of those minerals to the United States. Lands which are valuable or prospectively valuable for leasable minerals such as oil and gas, coal, phosphates, etc., may be disposed of with an appropriate reservation of such minerals to the United States. However, lands which are valuable for metaliferous minerals such as gold, silver, lead, etc., are locatable under the mining laws and are not subject to disposal with a reservation of the United States, and applications for the sale of such lands must be rejected. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959).

Accordingly, the decision appealed from is affirmed.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Legal Assistant
Division of Appeals

Enclosure

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MAR 7 10 00 AM 1962

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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 063703

DOCKET FILES

February 23, 1962

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DECISION

Kenneth S. and K. Irma McClelland	:	Public Sale Application

Decision Affirmed

The above-named parties have appealed a decision of October 19, 1961 rejecting their public sale application. The decision stated the land applied for is part of an area of the National Land Reserve lying adjacent to the California State Park at Columbia and is highly suited for development as an extension of the park for picnic and camping site purposes. Therefore, it was determined that the land should be retained in Federal ownership for future use as a recreation site.

The appellants contend essentially that their application should be allowed because Tuolumne County, where the land is located, needs taxable, privately-owned land. They also claim that such land is not needed for the development of the Columbia Historic State Park. To support this claim they have submitted a brochure about that park and also a brochure about the California state park system in general, and assert that the State has not developed all of the recreational lands in its parks and does not have the money to expand the Columbia park.

The information submitted by the appellants and their claims do not convincingly demonstrate that the classification of the land as unsuitable for public sale is erroneous at this time. This Bureau will not order lands to be sold at public auction if such action does not meet the test of serving the public interest. In this connection, where a tract of land has a high potential for recreational use, or furnishes access to recreational areas utilized by the general public, disposition of the land by public sale is not in the public interest and should be rejected. James E. Higgins, A-28169 (February 11, 1960) and cases cited therein.

A report from a Bureau land examiner indicates that a tract of approximately 500 acres, of which the land applied for is a part, possibly has high recreational potential. Although at this time the best future use or disposition of specific parts of the large tract has not been finally determined, this Bureau will, when it is possible, define the specific areas of high recreational value and will then be able to take action involving control planning and subdivision of those areas found to be proper for title transfer. This course of action, consistent with sound management and conservation principles, should serve the best public interest, including that of the County of Tuolumne.

Therefore, the public sale application was properly rejected and the decision is affirmed. Cf. Robert M. Denhardt, Sacramento 053901 (April 19, 1961).

Mr. and Mrs. McClelland are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick
Legal Assistant
Division of Appeals

Enclosure

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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 066019

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 7 10 00 AM 1962
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LAND OFFICE

February 26, 1962

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DECISION

John F. and Nick D. Guisto : Public Sale Application

Decision Vacated
Case Remanded

John F. and Nick D. Guisto have appealed from a decision, dated June 12, 1961, which rejected their public sale application for the reason that the sale of the applied for tract, which is a part of a larger tract of land, would devaluate the remainder of the land by its fragmentation.

The record is not conclusive as to whether it would or would not be in the public interest to sell the land.

Accordingly, the case is remanded to the Sacramento Land Office, through the California State Director, for further consideration.

Richard J McCormick
Legal Assistant
Division of Appeals

DISTRIBUTION:

Gilmore & Gilmore (Regular Mail)
John F. and Nick D. Guisto (Regular Mail)
SD (California)
LO (Sacramento)
Chief, Division of Lands & Recreation
Case File
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NBS

W

3

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SACRAMENTO, CAL.

MAR 12 10 00 01 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento
052730

S~ noted

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February 27, 1962

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DECISION

Fred E. Williford : Public Sale Application

Decision Affirmed

The above-named party has appealed from a decision of October 18, 1961 [1] rejecting the above-noted public sale application because the lands described therein have been classified as not proper for disposal at public auction, for the reasons they are more suitable for retention in Federal ownership as the highest and best use of the land is for timber production and public recreation as an integral part of a management unit of the Sacramento District's Timber and Resource Management Plan.

The appellant contends, in substance, that (1) the lack of water and the terrain is not conducive to development of the land for recreation, (2) there is little or no merchantable value to the timber, and (3) the land should be disbursed to the people as it will be of more value to individuals than to the government.

The authorized officer of the Bureau of Land Management may classify public lands for sale if he determines, in accordance with the existing regulations and procedures, that such lands are suitable for disposal. See 43 CFR 250.4 (b). The Bureau's land conservation program requires that classification of lands for disposal under the public land laws must meet the test of serving the public interest. The appellant has not presented any positive or substantial evidence that the classification of the land as not suitable for disposal at public auction is erroneous, and the classification will not be disturbed. Cf. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Accordingly, the decision appealed from is affirmed.

Mr. Williford is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick
Legal Assistant
Division of Appeals

Enclosure

---

[1] The appellant erroneously refers to the decision as a decision of the Director of the Bureau of Land Management, however, the decision appealed from is a decision of the Manager of the Sacramento Land Office.

DISTRIBUTION:
Mr. Fred E. Williford (Certified Mail)
Division of Lands and Recreation
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DEPT. OF INTERIOR
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MAR 12 10 00 AM 1962

BUREAU OF
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LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 058198
060145
064683

appeal to Sec.
6-22-62

2 noted

affirmed A-29647 ltr Decision 10-14-63

February 27, 1962

Certified Mail
Return Receipt Requested

DECISION

Floyd L. Patterson, Jr., :
and Jessie L. Patterson, et al.,[1] : Public Sale Applications

Decisions Affirmed

The parties named have appealed from decisions of the Manager, Sacramento Land Office, dated November 3, 1961, rejecting the above-noted public sale applications for the reason that it would not be in the best public interest to transfer title to the lands involved at this time but that they should be retained in Federal ownership until an inventory and detailed study of the National Land Reserve has been completed and the highest potential uses determined.

The decisions appealed from reflect a heavy recreational and residential potential of certain of the lands which are situated in the area of the recently completed Naciemento Dam Reservoir and within 25 miles of the Pacific Ocean. There is present indication of possible exchange activity between forest and military agencies of the Federal government in the general area.

Certain of the appellants question the Bureau's authority to reject their applications for what they describe as rough, remote and inaccessible tracts, contending that rejection was not made under any existing law but under legislation proposed for the 87th Congress. Other appellants contend, that the land involved is naturally similiar to adjoining ranch lands and may be reached only over unimproved roads through these patented lands. The patented lands consist of their own property to the north, east and south or of another contiguous owner and that its only value is for ranch purposes.

The contentions of the appellants are without merit. As to the contention concerning the absence of statutory authority for rejecting the offers, it is well established that the Secretary of the Interior, or his authorized delegate, has the discretionary authority to dispose of public lands at public sales, and it is determined that such disposal will not be in the public interest, such disposal must be rejected. Cf. Nelson A. Gertulla, 64 I.D. 225 (1957). This is also in conformity with the present program of the Bureau which provides that no public lands will be disposed of unless such disposition will serve a sound public purpose and the Government will receive full value for the lands.

---

[1] For names of other appellants and pertinent serial numbers see Distribution at end of decision.

Accordingly, the decisionsappealed fromare affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $15. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. H. S. Gilmore, Agent for Floyd Patterson (Certified Mail)
Floyd L. Patterson, Jr., and Jessie L. Patterson (Sacramento 058198)
(Regular Mail)
Messrs. Harry E. Blythe Jr., and Bruce W. Blythe (Sacramento 060145)
(Certified Mail)
James T. Smith (Sacramento 064683) (Regular Mail)
W. W. Eschwig, Attorney for James T. Smith (Certified Mail)
Chief, Division of Lands and Recreation
SD (California)
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appeal to Sec
affirmed Ltr. Decision
A-29506 8-1-63

DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAR 12 10 00 AM 1962

BUREAU OF
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LAND OFFICE

In reply refer to:
6.05c
Sacramento 062892

SN noted

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DOCKET FILES

February 28, 1962

Certified Mail
Return Receipt Requested

DECISION

Stanley L. Shepard	:	Public Sale Application

Decision Affirmed

Stanley L. Shepard has appealed from a decision dated August 31, 1961, which classified the applied-for land as most suitable for disposition under the Recreation and Public Purposes Act and thereupon rejected the appellant's public sale application. The land is an isolated and mountainous tract, containing 31.52 acres.

The appellant alleges that the tract is remote, surrounded by private lands, inaccessible to the public, and adjacent to lands owned by him; therefore, the land should properly be disposed of by public sale.

The Santa Cruz County 4-H Clubs, Inc., pursuant to whose application 065996 the land was classified, alleges that it owns lands adjoining the applied-for land and that the land is ideal for the development of hiking trails.

The issue in this case is one of proper classification. A public sale application is properly rejected where the applied-for land has been classified as valuable for recreation and suitable for disposal under the Recreation and Public Purposes Act. Roscoe T. Schafer, A-28131 (August 27, 1959). The appellant has not shown by substantial, positive evidence that this classification is erroneous.

Accordingly, the decision appealed from is affirmed.

Stanley L. Shepard is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Santa Cruz County 4-H Clubs, Inc.
P. O. Box 338
Soquel, California.

Richard J McCormick
Legal Assistant
Division of Appeals

DISTRIBUTION:

Stanley L. Shepard (Certified Mail)
Santa Cruz County 4-H Clubs, Inc. (Regular Mail)
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3rd noted

DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAR 12 10 00 AM 1962

BUREAU OF
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LAND OFFICE

In reply refer to:
6.05c
Sacramento 051853

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DOCKET FILES

March 2, 1962

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DECISION

Joseph T. Rishwain : Public Sale Application

Decision Affirmed

The above-named party has appealed from a decision dated November 6, 1961 that rejected in part his above-noted public sale application for the reason that part of the land has been classified as not proper for disposal because the highest and best use of the land is for recreation and public purposes.

On appeal, the appellant asserts that he wishes to acquire the lands because it borders his present cattle ranch and he desires to use it for grazing his cattle. He further contends that the land is not suitable for public recreation because the terrain is rocky and there are no suitable areas for recreational purposes.

Under the present program of the Department, public lands valuable for recreational purposes are made available to the general public rather than disposed of for private uses. Cf. Joseph M. Schuck et al., A-28603 (August 16, 1961). The Bureau's field examination report shows the classification of the land as not being proper for disposal under the public sale law. Section 7 of the Taylor Grazing Act of June 28, 1934, as amended, (43 U.S.C., 1958 ed., sec. 315f), gives specific authorization for classification for disposition of public land under the appropriate public land laws to the Secretary of the Interior. Lands are classified for sale by the Secretary where, in his judgment, such action would appear warranted.

The Department has consistently held that where an applicant for land disagrees with a classification of the land he must show through positive and substantial evidence that some error has been committed or that vital and essential facts have not been considered which present a valid basis for changing the classification or the classification will not be distrubed. Cf. Mary Refugio Jackson, et al., A-27236 (February 29, 1956). This the appellant has failed to do. Accordingly, the decision of the land office is hereby affirmed.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:
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LO (Sacramento)
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LAND OFFICE

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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 063712 ✓
066021 ✓

Sm noted

March 2, 1962

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DECISION

Elmer L. Page, et al. : Public Sale Applications
William A. Fahle :

Decisions Affirmed

The parties named have appealed from separate decisions of the Manager, Sacramento Land Office, dated November 22 and December 12, 1961, rejecting their above-identified public sale applications giving as the reason that it would not be in the public interest to transfer title to the lands but that they should be retained in public ownership until an inventory and detailed study of the Federal Land Reserve can be accomplished and the highest use potential determined. The decisions further reveal that, in Sacramento 063712, the land applied for was near the outskirts of Nevada City, California, where the highest and best use was for residential purposes. In Sacramento 066021, the Manager's decision was also based on the fact that the applicant only applied for a 40-acre portion of an isolated 80-acre tract which would cause undesirable fragmentation of the public land. The manager further cited the conflict with State Exchange application, Sacramento 051074.

Mr. Page (063712) contends the land he applied for is needed so that he can extend a street and install utilities, without filling or bridging a gully, in order to reach land he owns and is developing within the city limits of Nevada City, California. Mr. Fahle, applicant under Sacramento 066021,[1] who filed on February 15, 1961, points out that land in the conflicting State Exchange application has been withdrawn from that application and is no longer an obstacle. He belatedly offers to amend his application to include the entire 80-acre tract. He argues that the land is not of value for public use because of its isolation its rough terrain, but that it would be useful to him as an access route to his property on top of Foster Mountain.

---

[1] Inadvertently accepted, although the moratorium on disposal of public lands became effective February 14, 1961.

The contentions of the appellants are insufficient to establish that classification of the land for retention is in error. It is well established that the Secretary of the Interior, or his authorized delegate, has the discretionary authority to dispose of public lands at public sales, and if it is determined that such disposal will not be in the public interest, it will not be approved. Cf. *Nelson A. Gertulla*, 64 I.D. 225 (1957). This is also in conformity with the present program of the Bureau which provides that no public lands will be disposed of unless such disposition will serve a sound public purpose and the Government will receive full value for the lands.

The applicants for the lands may later have the opportunity of bidding on the lands at public sale, initiated by the Bureau, or again making application should the Bureau, as the result of detailed study and ation of inventory, determine that the lands should be sold.

Accordingly, the decision appealed from is affirmed.

Elmer L. Page, et al., and William A. Fahle are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for *each* application included in the appeal. If the appeal covers both applications adversely affected by this decision the total filing fee is $10. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Elmer L. and Laura E. Page (Certified Mail)
W. C. and Vida B. White (Certified Mail)
William A. Fahle (Certified Mail)
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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 055682

March 2, 1962

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DECISION

H. Francis Bacchi and Byron W. Bacchi	:	Public Sale Application

Decision Affirmed, as Modified

The above named persons have appealed from a decision, dated November 2, 1961, which rejected their public sale application for the reason that the applied-for land is mineral in character.

The appellants allege that the land is not mineral in character for the reason, among others, that it would be impossible for the mineral claimant to show values of quantity and quality to make a paying mine. However, they have submitted no evidence to support their allegations.

Information of record, including data assembled as a result of examination of the land by qualified land examiners of this Bureau, discloses that the subject land is mineral in character and valuable for gold.

The decision from which the appeal is taken, erroneously held that lands prospectively valuable for minerals leasable under the United States mining laws are not subject to disposition under the public sale act. The regulation relating to the sale of public lands, 43 CFR 1954 ed., 250.8(a), provides in pertinent part that mineral lands may not be sold except under specific authority which exists for certain minerals with a reservation of those minerals to the United States. Minerals subject to reservation to the United States include non-metaliferous minerals leasable under the mineral leasing laws, such as oil and gas, coal, etc. However, lands which are determined to be valuable for or contain minerals locatable under the United States mining laws, such as gold, silver, uranium, and other metaliferous minerals, are not within the class of lands saleable with an appropriate reservation. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959), and cases cited therein.

Accordingly, the decision appealed from is affirmed as herein modified.

H. Francis Bracchi and Byron W. Bracchi are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Gilmore and Gilmore, Agents for appellants (Certified Mail)
H. Francis and Byron W. Bracchi, (Regular Mail)
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6.05c
Sacramento 053928
059287

3r. Noted

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Bureau of Land Management
Washington 25, D. C.

March 2, 1962

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DECISION

John F. Gibson, deceased, by his wife Mildred M. Gibson	:	Public Sale Application
	:	
Harold W. Rodgers	:	

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, dated November 29, 1961, rejecting their public sale applications. The Manager held that the lands applied for have been examined and found not to be suitable for title transfer under the public sale law because, among other reasons, they are located in a critical deer range area and have a high recreational potential.

In their appeals the applicants allege, in essence, that they own lands contiguous to the tracts for which they have applied; that the sale of the lands would not interfere with the deer range; that the lands are suitable for the uses to which they intend to put them, and that it would be more in the public interest to make the lands available for private ownership.

An applicant for public lands, who appeals from an adverse classification of the lands, has the burden of showing, by submitting substantial affirmative evidence, in what respect the classification is in error. Cf. Ronald E. Paule, A-28226 (March 29, 1960). In the instant cases, the appellants, uncorroborated assertions do not disprove the basic finding of the Manager. Therefore, the Manager's decision is affirmed insofar as it applies to the appellants' applications.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See the enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5 for each application for which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Donald R. Kennedy, Attorney for Harold W. Rodgers (Certified Mail)
Harold W. Rodgers (Regular Mail)
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In Reply refer to:

6.05c
Sacramento 058697

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Washington 25, D. C.

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MAR 19 10 09 AM 1962

BUREAU OF
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LAND OFFICE

March 6, 1962

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DECISION

Salvador P. and Ruth B. Martorana	:	Public Sale Application

DECISION AFFIRMED

The above named parties have appealed from a decision dated June 19, 1961, which rejected their public sale application because the lands are mineral in character.

The appellants contend, in substance, that the lands are nonmineral in character since the land consists mainly of hydraulic tailings from commercial mining operations conducted prior to the time when such mining was outlawed in the State. Appellants assert that they were refused access to the mineral report on the lands and request a hearing so they can present evidence of the nonmineral character of the land.

A review of the record does not show that appellants ever requested permission to examine the report of mineral examination and were refused such permission. Had appellants done so these documents or copies thereof would have been made available to them. Cf. Roscoe L. Schafer, A-28131 (August 27, 1959). Moreover, appellants have presented no factual evidence on appeal that would tend to show that the land is nonmineral in character. The record, however, shows that the land was classified as mineral in character pursuant to a mineral examination by qualified mineral examiners of this Bureau.

Public sale regulations of the Department provide that mineral lands may not be sold at public auction except under specific statutory authority which exists for the sale of lands valuable for certain leasable minerals with a reservation of those minerals to the United States. Gold is not a leasable mineral and the land is, therefore, not subject to sale for this reason. See 43 CFR 250.8(a). Cf. Roscoe L. Schafer, supra.

A public sale applicant is not entitled as a matter of right to a hearing for determining the proper classification of the land for which he applied, Paul B. and Ruth M. Butler, A-27634 (August 26, 1958). Moreover, no showing has been made by appellants that they will be able to present evidence on the mineral character of the land which would controvert the facts of record. Accordingly, the appellants' request for hearing is hereby denied. Cf. Margaret A. Andrews et al., 64 ID 9 (1957).

Accordingly, the decision appealed from is affirmed.

Salvador F. and Ruth B. Martorana are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

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In reply refer to:
6.05c
Sacramento 060749

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 7, 1962
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DECISION

Henry P. Bowen : Public Sale Application
:
:

Decision Affirmed

Henry P. Bowen has appealed from a decision of the Manager, dated September 20, 1961, rejecting his public sale application. The decision held that there is insufficient data available to determine the proper disposition of the applied for land at this time, that the potential uses of the land can only be fully realized and safely assured if they are retained in Federal ownership pending an inventory and analysis of the National Land Reserve, and that in the absence of any positive showing or compelling reasons for the sale of the land it should remain in Federal ownership pending the enactment of appropriate legislation providing for better ways to manage and develop the land in conformity with the National Land Reserve conservation program.

In his appeal Mr. Bowen asserts, in essence, that he owns land on the west and east of the tract in question, that the applied for land is rough, mountainous terrain and can be used only for grazing and as a corridor for moving his cattle from one section of his land to another, and that the sale of the land will not inconvenience anyone.

An applicant for public land who appeals from an adverse classification of the land has the burden of showing through the submission of substantial affirmative evidence, in what respect the adverse classification is in error. Cf. Ronald E. Pauls, A-28226 (March 29, 1960). In the instant case, the appellant's contentions are not an answer to the basic finding of the Manager, that is, that the sale of the land applied for would not be in the public interest at this time.

Accordingly, the decision of the Manager is affirmed.

Mr. Bowen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

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Paul E. Griffiths, Attorney for the appellant (Certified Mail)
Henry P. Bowen (Regular Mail)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 063367
6.05c

March 9, 1962

DECISION

Frederick E. Harrison : Public Sale Application

Decision Vacated
Case Remanded

Frederick E. Harrison has appealed from a decision of the Manager, dated September 20, 1961, rejecting his public sale application. The decision held that there is insufficient data available to determine the proper disposition of the applied for land at this time, that the potential uses of the land can only be fully realized and safely assured if it is retained in Federal ownership pending an inventory and analysis of the National Land Reserve, and that in the absence of any positive showing or compelling reasons for the sale of the land, it should remain in Federal ownership pending the enactment of appropriate legislation providing for better ways to manage and develop the land in conformity with the National Land Reserve conservation program.

In his appeal, Mr. Harrison states, in essence, that the applied for land is isolated from all residential and industrial complexes and lies wholly within other lands owned by him, that the entire San Joaquin Valley is devoted almost exclusively to farming and livestock industries, and that the land can only be used beneficially in connection with livestock grazing due to a lack of water on the land, rendering it unsuitable as a habitat for migratory birds and other wildlife found in the Valley, and due to its steep, uneven topography.

In the circumstances of this case it was improper to reject the appellant's application. If a further study of the land is needed before it may be classified for its highest use the appellant's application should be suspended pending the outcome of the study.

Accordingly, the decision appealed from is vacated and the case is remanded to the Manager of the Sacramento Land Office, through the Bureau's California State Director, for further appropriate consideration.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

DISTRIBUTION:

Hon. Clair Engle, United States Senate (Regular Mail)
Frank Murphy, Attorney for the Appellant (Regular Mail)
Frederick E. Harrison (Regular Mail)
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APR 9 10 09 AM 1962

In reply refer to:
6.05c
Sacramento 063674

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

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BUREAU OF
LAND MANAGEMENT
LAND OFFICE

DECISION

March 12, 1962

Michael E. and Hilda E. Stevens	:	Public Sale Application

Decision Vacated
Case Remanded

Michael E. and Hilda E. Stevens have appealed from a decision of the Manager, dated October 20, 1961, rejecting the above-cited and several other public sale applications, in addition to a large number of small tract applications. In his decision, the Manager stated that some of the lands for which the rejected applications had been filed were withdrawn; that others required further examination and analysis to determine their recreational potential; that there are mining claims covering some of the lands; and that the lands cannot be developed properly under existing laws and should be retained in Federal ownership pending the enactment of new legislation.

The appellants have asserted in their appeal that the 40 acres of land for which they have applied are isolated, not withdrawn for use by any other governmental agency, and are not affected by a mining claim.

An examination of the record fails to show which, if any, of the reasons cited for the rejection of the applications included in the Manager's decision apply to the land in question. Accordingly, the decision of the Manager is vacated and the case record is remanded to the Manager, through the Bureau's California State Director, for further consideration and appropriate action.

Richard J. McCormick
Chief, Branch of Land Appeals
Division of Appeals

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SACRAMENTO, CAL.

MAR 26, 1 38 PM 1962

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LAND OFFICE

In reply refer to:
6.05c
Sacramento 056447,
060320, 065678,
065709, 065973

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 13, 1962

DOCKET FILES

DECISION

Joe T. and Frances L. Leavell et al. : Public Sale Applications

Decision Vacated, Cases Remanded

Joe T. and Frances L. Leavell and 4 others [1] have appealed from a decision of the Manager, dated November 28, 1961, rejecting their public sale applications. The decision rejected a number of public sale applications, in addition to those filed by the appellants, and some small tract applications as well. In his decision, the Manager discussed various reasons why the lands, in general, should not be sold at the present time, indicating that one or more of the reasons applied to each of the applications rejected. The Manager concluded that as the lands applied for should be retained in Federal ownership pending the completion of an inventory and evaluation designed to determine their best use, all of the applications should be rejected.

The record shows that due consideration was not given to the particular characteristics of the isolated tracts applied for by the appellants, tracts ranging in size from approximately .50 acres to 40 acres. If further study is needed before the lands may be classified for their best use, the appellants' applications should be suspended pending the outcome of the study.

Accordingly, the decision appealed from is vacated and the case records are remanded to the Manager, through the Bureau's California State Director, for further consideration and appropriate action.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

---

[1] Joe T. and Frances L. Leavell, Sacramento 056447
Thomas P. Shanley, Jr., Thomas P. Shanley, III, Eileen Shanley, Mary Shanley, Sacramento 060320
Frank L. Grow and William M. Rowe, Sacramento 065678
Frank L. Grow and William M. Rowe, Sacramento 065709
Harold G. Robinson, Sacramento 065973

Distribution on next page

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In Reply refer to:
6.05c
Sacramento 060299

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BUREAU OF
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DECISION

Charles H. Allums : Public Sale

Decision Affirmed

Mr. Charles H. Allums has appealed from the September 25, 1961, decision by the Manager, Sacramento Land Office, cancelling a public sale scheduled to have been held October 4, 1961, for the E½E½ sec. 17, T. 9 N., R. 6 W., M.D.M., California, pursuant to Mr. Allums' public sale application.

The Manager noted that a review had been made of the data assembled in a field examination of the land, and it was determined that the public sale of the lands at this time would not be in the public interest.

The appellant claims that the sale of the lands involved would serve a sound public purpose and improve the administration of public lands for the following reasons: the general economy would be helped by placing the land on the public tax rolls; he would fulfill conservation purposes by planting pine trees and Christmas trees, and would re-plant an area which has been burned over by forest fires, and take other action to protect the property in this respect; he had thought of building an "atomic shelter" on the property; and he would not fence the land or otherwise attempt to keep citizens from hunting, fishing or using the property for recreational purposes.

The appellant's showing on appeal has been considered and it does not warrant any modification in the classification of the land as unsuitable for public sale at this time. From his statements and from the record data, it appears that the land may have a potential for recreational use.

In the circumstances the lands should be retained in Federal ownership until a complete study is made relating these lands to the needs of the public with respect to the recreational factor, economic factors, and conservation principles. The Manager's action was proper and in the public interest. CF. Kenneth S. and K. Irma McClelland, Sacramento 063703 (February 23, 1962). Therefore, as the appellants have not shown with any positive or substantial evidence that the present classification of the tract is erroneous, the decision is affirmed.

Mr. Allums is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be five dollars. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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March 15, 1962

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DECISION

John F. McGonigle : Public Sale Application

Appeal Dismissed

An appeal has been filed by John F. McGonigle from a decision of the Manager, dated September 20, 1961, rejecting the public sale application filed by Sadie Louise Cornett. Mr. McGonigle states that his interest in the application arises from the purchase of the lands surrounding the tract from the estate of Mrs. Cornett before the application was rejected by the Manager.

Even though Mr. McGonigle may now own the lands surrounding the tract of public land described in Mrs. Cornett's application, this fact alone does not give him any interest in the application. He has, therefore, no standing to appeal from the application's rejection. Accordingly, his appeal is dismissed.

In view of the current moratorium which precludes the filing of applications for public lands, Mr. McGonigle may not file a public sale application for the land in question at the present time. However, if the land is subsequently examined and found suitable for sale on the motion of the Bureau of Land Management, Mr. McGonigle will be afforded an opportunity to assert a preference right bid for the land, if he is at that time a contiguous land owner.

Mr. McGonigle is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
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appeal to Sec
6-22-62
affirmed - ltr Decision A-29628
10-8-63
XHC

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In reply refer to:
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Sacramento 061937

DOCKET FILES

March 16, 1962

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DECISION

Frank Ralph Kukuk	:	Public Sale Application

Decision Affirmed

Mr. Kukuk has appealed from a decision of the Manager, Sacramento Land Office, dated October 24, 1961, rejecting his above-identified public sale application for the stated reason that the lands are not suitable for sale under the Public Sale Act. The decision held that the lands applied for are valuable to the general public for recreational purposes, particularly for deer hunting and, further, that disposal is not indicated as serving a sound public purpose pending completion of the study, evaluation and inventory of the National Land Reserve to determine the highest potential use of the lands comprising it.

The appellant contends that, (1) the 200 acre tract sought, surrounded as it is by closed land, will not safely support a group of deer hunters, (2) perpetuation of a hunting preserve adjacent to a school site[1] is not compatible and, (3) the building of several homes, as apparently planned by the friends and neighbors of the applicant, would result in tax benefits from the land to the county and would be of greater benefit than the preservation of a very limited hunting area for a dubious number of deer hunters.

The contentions of the appellant are not persuasive. It is well established that the Secretary of the Interior, or his authorized delegate, has the discretionary authority to dispose of public lands at public sale, and if it is determined that such disposal will not be in the public interest, authorization of the sale must be rejected. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957). This is also in conformity with the present program of the Bureau which provides that no public lands will be disposed of unless it is determined that such disposition will serve a sound public purpose and the government will receive full value for the lands.

Accordingly, the decision appealed from is affirmed.

Frank Ralph Kukuk is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

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[1] The appellant seems to believe that adjacent section 36, being a school section, is planned as the site for a school.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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6.05c
Sacramento 047407

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March 21, 1962

DECISION

Everett M. and Ethel Fancher
Glenn and Marquerite Fancher

Public Sale Application

Decision Vacated
Case Remanded

The above-named parties have appealed from a decision of the Manager, dated October 20, 1961, rejecting their own and 38 other public sale applications, a homestead application, an Indian allotment application and a large number of small tract applications. In his decision, the Manager listed several reasons why the public lands in the area embraced by the various applications are not suitable for sale or entry at the present time, indicating that one or more of the reasons applied to the lands described in each application included in the decision.

In their appeal, the applicants assert that their application was not given the individual attention to which it is entitled and that none of the reasons listed by the Manager applies to the tract for which they have applied. They state that the land is not suitable for recreational purposes since it has no water and no trees, except scrub oak, and that it is suitable only for grazing purposes, the use to which it has been put by them during the last eight years.

An examination of the record fails to disclose which, if any, of the reasons listed by the Manager apply to the particular tract for which the appellants have applied. Accordingly, the decision of the Manager is vacated and the case record is remanded to the Manager, through the Bureau's California State Director, for further consideration and appropriate action.

Richard J. McCormick
Chief, Branch of Land Appeals
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appeal to Sec
affirmed A-29538-8/27/62 XHC

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6.05c
Sacramento 062930

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March 21, 1962

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DECISION

Rosemon Willis	:	Public Sale Application

Decision Affirmed

Rosemon Willis has appealed from a decision dated February 6, 1962, rejecting his public sale application because it has been determined that the land applied for is mineral in character and not subject to disposition under the public sale laws. The decision relates that the land embraces part of the "Mother Lode," a system of parallel and sub-parallel gold bearing veins, and lies adjacent to the "Molly Harrison" group of patented mining claims.

Mr. Willis asserts, in essence, that there is no factual evidence the veins of ore run on or under the land for which he has applied, that there has been no mining activity in the "Molly Harrison" mines for 25 to 30 years, that the veins of the "Molly Harrison" mines run vertically and not horizontally, and that he has been advised that his application can be considered for private sale.

The appellant's assertions, unsupported by any factual data, do not disprove the findings embodied in the decision from which he has appealed. Hence, the rejection of his application must be affirmed. Lands determined to be mineral in character may not be sold except under the specific statutory authority which exists for the sale of lands valuable for certain minerals with a reservation of those minerals to the United States, and there is no statutory authority to sell lands valuable for gold and similar locatable minerals. 43 CFR 250.8(a); 43 CFR Part 102. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959).

Accordingly, the decision appealed from is affirmed.

Mr. Willis is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
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In reply refer to:
6.05c
Sacramento 056790

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March 23, 1962

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DECISION

Louis G. and Ruth N. Dunn	:	Public Sale

Appeal Dismissed

An appeal has been filed by Phillip W. Myer on behalf of Louis G. and Ruth N. Dunn from a decision of the Manager dated October 20, 1961. Mr. Myer, a realtor doing business as "Farmer Phil", filed the appeal as "agent" for the applicants.

According to the regulation 43 CFR 1.3(b), practice before the Department of the Interior is limited to: (1) individuals who have been formally admitted to practice before the Department, (2) members of the bar, (3) individuals practicing on their own behalf or for a member of their family, for partnerships of which they are members or for a corporation or other business association in which they are officers or full time employees, and (4) receivers, administrators or similar fiduciaries, or persons acting in other capacities not pertinent here.

In the instant case, it does not appear that Mr. Myer is an attorney at law or that he is otherwise qualified to practice before the Department on behalf of the Dunns. Accordingly, the appeal he has filed is dismissed. Cf. Ben P. Gleichner, 67 I.D. 321 (1960).

There is, in addition, some question as to the Dunn's interest in this matter. The lands in question were offered for sale pursuant to a public sale application filed by Keith and Helen Reid and were later awarded to the Dunns by virtue of the preference right claim to the lands. This entire sale was, however, vacated by the Bureau of Land Management in a decision dated July 29, 1960, a decision from which the Dunns did not appeal. Rather than appeal, the Dunns' attorney, Mr. Alvin Landis, requested in a letter dated October 6, 1960, that the money deposited by the Dunns in connection with their preference right bid be refunded, and that they be advised if the lands were again offered for sale. Hence, even though the Dunns were listed in the Manager's decision of October 20, 1961, as parties in interest, it does not appear that they had any interest which could have been adversely affected by that decision.

Louis G. and Ruth N. Dunn are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount

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of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Chief, Branch of Land Appeals
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Sacramento 054007

March 28, 1962

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DECISION

Ovid L. Holmes : Public Sale Application

Decision Affirmed

Mr. Ovid L. Holmes has appealed from a decision of the Manager, dated November 27, 1961, rejecting his public sale application and a large number of small tract applications. In his decision the Manager stated that the lands described in the various applications have a high recreation potential, but that further examinations of the lands must be made to determine whether or not the lands should be sold or retained in Federal ownership. The Manager also held that the lands cannot be properly developed under existing laws and should be retained in Federal ownership pending the enactment of new legislation.

In his appeal, Mr. Holmes asserts, in essence, that the land for which he has filed his public sale application has no practical recreation potential because over one-half of the land has been burned over; the topography of the land is precipitous, containing much ruble; there are no streams or springs on the lands; and because there are no roads into the area. He claims that the land is suitable only for grazing, the use for which he has previously leased it.

An applicant for public lands who appeals from an adverse classification of the lands has the burden of showing, by submitting substantial affirmative evidence, in what respect the classification is in error. Cf. Ronald E. Pauls, A-28226 (March 29, 1960). In the instant case, the appellant's uncorroborated assertions do not disprove the basic findings of the Manager. Therefore, the Manager's decision is affirmed insofar as it applies to the appellant's application.

Mr. Holmes is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See the enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict complaince with the regulations.

Chief, Branch of Land Appeals
Division of Appeals

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Mr. Edwin J. Regan, Attorney for Appellant (Certified Mail)
Mr. Ovid L. Holmes (Regular Mail)
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DECISION

Boyce Thompson Institute : Public Sale Applications
for Plant Research, Inc. :

Cases Remanded

On March 29, 1962, the above-named party filed an appeal to the Secretary of the Interior from a decision of the Legal Assistant, Division of Appeals, Bureau of Land Management, dated February 7, 1962, affirming separate decisions of the Sacramento Land Office dated September 26 and October 17, 1961, which rejected the above-identified public sale applications.

Reports of field examination show that the lands involved in the subject public sale applications are embraced in mining claims. Before these applications can be further processed, disposition must be made of the mining claims. Moreover, subsequent to the issuance of the aforesaid decisions, information has been brought to the attention of the Director which requires further consideration of these applications by the Land Office.

Accordingly, the decisions of February 7, 1962, September 26, 1961 and October 17, 1961, are hereby vacated, and the cases are remanded to the Sacramento Land Office, through the Bureau's State Director, for further appropriate consideration. 1/

H R Hochmuth
Associate Director

1/ Even though an appeal to the Secretary has been taken from a Bureau decision, the Bureau may reconsider and change its decision within 10 days after said appeal is filed if there are no adverse parties involved. Departmental instructions of March 21, 1946.

cc:
Boyce Thompson Institute for Plant Research, Inc. (Regular Mail)
Gilmore and Gilmore, for Appellant (Regular Mail)
Mrs. Morton Downey (Regular Mail)
Dr. George McNew (Regular Mail)
SD (California) with case records
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In reply refer to:
6.05c
Sacramento 062962

April 11, 1962

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DECISION

Donald Chesbro, Jr. : Public Sale Application

Decision Affirmed

Donald Chesbro, Jr. has appealed from the decision dated January 29, 1962, which rejected his above-noted public sale application because the public interest would best be served by an exchange of lands to block up federal lands in management areas, particularly in the vicinity of Coe Memorial Park area.

The appellant contends, in substance, that there are several large blocks of land in the same area which have more trading potential than the subject land and the large blocks are under "restrictions" and are available to be opened for sale only to adjoining owners, which leaves him out in the cold.

A careful review of the record affirms the ruling in the decision appealed from that the lands are more valuable for exchange purposes in connection with the administration of the Coe Memorial Park than for sale at public auction. Moreover, refusal to classify land as suitable for public auction is in conformity with this Bureau's policy of not disposing of public lands in the absence of compelling reasons for doing so. The appellant has shown no such compelling reasons in the instant case.

The reasons stated for the appeal are mere self-serving and unsubstantiated statements and are insufficient to cast doubt on the accuracy of the classification. In such instances the classification will not be disturbed. Cf. John Hayward Dill, A-28467 (February 14, 1961).

Accordingly, the decision appealed from is affirmed.

Donald Chesbro, Jr. is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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April 13, 1962

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DECISION

Nunci Joe Bufardeci : Public Sale Applications
Henry M. and Norene M. Lane :

Decision Affirmed

The above-named parties have appealed from the decision dated December 19, 1961 which rejected their individual public sale applications because there were no compelling reasons for selling the lands and no sound public purpose would be served by sale thereof.

Mr. Bufardeci contends, in substance, that access to the lands is by private road which is closed by a gate locked at all times, therefore, there is no public access; the public land moratorium does not affect applications already on file, and since this application was filed over 5 years ago, the lands should be approved for sale.

The appellants, Mr. and Mrs. Lane, merely state that the [subject] lands cut their ranch in two and that they would take any part of the land as long as it joined the two parts of their ranch together.

A careful review of the records confirms the findings in the decision appealed from that sale of the subject lands in both cases would serve no sound public purpose. Moreover, the lands have definite future use for exchange in blocking up Federal lands in valuable resource management areas.

It is also noted that the demand for recreational lands in this area is becoming increasingly important. Under the present land conservation program of this Bureau, lands having possible value for recreational purposes will not be disposed of at public auction. Cf. Lafayette M. Hughes, A-27213 (December 28, 1955).

The appellants' reasons for appeal are mere self-serving, unsubstantiated statements and do not point out wherein the classification is in error. In the absence of evidence that the classification is in error, it will not be disturbed. Cf. Lawrence R. Aker, A-27815 February 13, 1959).

Accordingly, the decision appealed from is affirmed.

Each of the above-named parties is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in

43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application involved in the appeal. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
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April 13, 1962

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DECISION

Jess Morgan : Public Sale Application

Decision Affirmed

Jess Morgan has appealed from a decision, dated September 20, 1961, rejecting his public sale application, for the reason that the applied-for land has been classified as not proper for such disposal. The decision states that the applied for land is located within 100-1,000 feet of the proposed Nashville Unit Reservoir which will create a storage capacity of approximately 450,000 acre-feet. Thus, the highest use of the land is for recreation and public purposes and it should be retained in public ownership. The decision also held that the subject land cannot be appraised with confidence, there being insufficient suitable data available on which to base a dependable appraisal consistent with current standards, and the land may be valuable for gold.

The appellant alleges that the applied-for land is not suitable for recreation, because it is completely surrounded by private land, and it would be too far from the reservoir water level. He also disputes the other rulings in the decision.

It is the policy of the Department to make public land, valuable for recreation purposes, available to the general public, rather than allow disposition for private uses; Roscoe T. Schafer, A-28131 (August 27, 1959). Therefore, it is proper to reject applications for land that has been classified as suitable for recreation uses. Cf. Randall Storey, A-27573 (September 22, 1958); Lafayette M. Hughes, A-27213 (December 28, 1955).

The appellant has not presented any positive or substantial evidence to show that the classification and the land as not suitable for disposal at public auction is in error, and the classification will not be disturbed. Cf. John Hayward Dill, A-28467 (February 14, 1961).

In view of the fact that disposal of the land would not be in the public interest, it is not necessary to discuss the other reasons for rejecting the appellant's application.

Accordingly, the decision is affirmed.

Jess Morgan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

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April 19, 1962

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DECISION

George B. & Dorothy J. Selkirk : Public Sale Application

Decision Affirmed

The above-named parties have appealed from the Manager's decision, dated February 6, 1962, rejecting their above-identified public sale application for the reason that the applied for land has been classified as unsuitable for disposition at public auction and is required for retention in Federal ownership because, (1) pending the completion of the Bureau's present inventory, analysis, and evaluation of the National Land Reserve to determine its highest and best use, no disposition of public land will be made unless it is clearly shown that such disposition will serve a sound public purpose, taking into consideration the needs of the community and the nation, (2) there is no compelling reason to dispose of the land, as there is no positive showing that it would be in the public interest, (3) several mining claims are known to be on the land and a small production of cromite taken therefrom, and (4) because of the nearby, rapidly expanding sea-side resort town of Cayucos, the land may have recreational value.

The appellants contend in substance that (1) their application should have been considered in light of the conditions in effect at the time it was filed and not governed by a subsequent policy, (2) there are no valid mining claims on the land, although it is being ravaged and rendered unfit for any use by modern bulldozer prospecting and mining methods, (3) under private ownership the land would receive a program of conservation and be placed on the tax rolls which would benefit the county and community and would surely be in the public interest, and (4) the land is extremely rough and mountainous, completely isolated, without public access of any kind, and it would be foolish to consider it for recreational use.

In exercising the discretionary authority vested in him under Section 7 of the Act of June 28, 1934 (48 Stat. 1272) as amended by the Act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 1958 ed. 315 f), the Secretary of the Interior, or his delegate, may properly consider and weigh all factors bearing on the suitability of land for use or disposal, including the effect on the public interest. Nelson A. Karttula, 64 I.D. 225 (1957). In view of the Bureau's public land inventory and the potential recreational value of the land sought, it is determined that the sale of the land at this time would not serve a sound public purpose or be in the public interest.

The appellants have not presented any positive, substantial evidence that the classification of the land as not proper for disposal at public auction is in error, therefore, the classification will not be disturbed. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Accordingly, the decision appealed from is affirmed.

George B. and Dorothy J. Selkirk are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

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In reply refer to:
6.05c
Sacramento 058358

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SACRAMENTO, CAL.
MAY 21 10 00 AM 1962
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

May 14, 1962

DOCKET FILES

DECISION

William E. Davis : Public Sale

Sale Reinstated
Case Remanded

On May 16, 1960, the Manager of the Sacramento Land Office issued a decision vacating a sale of public land held on September 15, 1959, on the ground that consummation thereof would be in violation of the so-called anti-speculation policy announced by former Secretary of the Interior Seaton. A decision issued by the Director, Bureau of Land Management, dated November 8, 1960, affirmed the action taken by the Manager, and the applicant and only bidder, William E. Davis, appealed to the Secretary of the Interior. In a decision issued on April 25, 1962, William E. Davis, A-28747, the Assistant Secretary of the Interior stated that the anti-speculation policy which was the ground for rejecting the application had been superseded by the Department's current land conservation program, announced February 14, 1961. He stated that while it would not be in the best interest of the Government to permit the consummation of a sale upon the basis of values which were determined before the date of the sale of the land and which do not reflect the true value of the land on the date of the sale, it is unfair to penalize the purchaser at a public sale for events happening after that sale. He concluded, however, that there was nothing in the record from which a determination could be made as to whether the appraisal of the land, which preceded the sale by three years, represented the fair market value of the land on the date of the sale. The Assistant Secretary thereupon remanded the case to the Bureau of Land Management with instruction to obtain a new appraisal of the land and to reinstate the sale if the new appraisal indicated that the fair market value of the tract on the date of the sale did not exceed the amount bid. His instructions were that the vacation of the sale would stand if the new appraisal should show that the amount bid did not represent the fair market value of the tract as of the date of the sale. [1]

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[1] The appraisal report, prepared July 11, 1956, set the value of the tract at $8,008. The sole bid for the tract, submitted by Mr. Davis, was in the amount of $8,011.

Pursuant to the Assistant Secretary's instructions, a new appraisal of the land has been made, the results of which show that the fair market value of the land as of September 15, 1959, was $8,000.

Accordingly, the Manager's decision of May 16, 1960, and the Director's decision of November 8, 1960, are vacated, the public sale of the land in question is reinstated, and the case record is remanded to the Manager, through the Bureau's California State Director, for further processing.

Karl S. Landstrom
Director

DISTRIBUTION:
Hon. Clair Engle, United States Senate
Hon. Harold T. Johnson, House of Represenatives
Mr. Frank W. Shuman, Attorney for Mr. Davis (Regular Mail)
Mr. William E. Davis (Regular Mail)
SD (California)
LO (Sacramento)
Division of Lands & Recreation
Division of Appraisals
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In reply refer to:
6.05c
Sacramento 054443

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAY 29 2 24 PM 1962

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 1[illegible]

DOCKET FILES

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Return Receipt Requested

DECISION

Benjamin F. [illegible] :
Frances D. [illegible] : Public Sale
:
:

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, Sacramento Land Office, dated December 8, 1961, which rejected their high bid and declared Mary L. Yerby, the purchaser of the land sold as Parcel No. 3 pursuant to the above-identified public sale application.

The sale was held on November 2, 1961. The appellants were declared the high bidder at the sale. The sale was then suspended for 30 days to allow contiguous land owners to exercise their preference rights to purchase the land as provided for by the applicable regulation, 43 CFR 250.11.

On November 20, 1961, and during the 30-day period after the date of the sale, Mary L. Yerby submitted acceptable proof of ownership of contiguous land, and remitted the amount necessary to meet the high bid of the appellants. The appellants did not submit any evidence of ownership of land contiguous to the land sold as Parcel No. 3 during the 30 day period after the sale. The Manager awarded the land to Mary L. Yerby, she being the only person properly exercising a preference right claim to the land in question.

The appellants contend, in substance, that the land sold is contiguous to the land owned by them. That they owned the contiguous land at the time their application was filed, at the time of the sale and at the present time and stated their ownership in the application. The appellants also assert that the Bureau employees concerned were fully aware of their intention of exercising their preference right to purchase the land because of the numerous telephone calls made to the Land Office. They submitted evidence consisting of certification signed by the Recorder of El Dorado County, as proof of ownership of contiguous land as of December 13, 1961. Such evidence, however, was not filed in the Land Office until December 29, 1961, which was after the 30-day period after the sale had expired, and, therefore, it was not timely filed.

Though the appellants were declared the high bidder does not eliminate the requirement for the timely filing of satisfactory proof of ownership of contiguous lands within the 30-day period after the highest bid was submitted, where another preference right claimant had timely submitted such evidence. Cf. Elmer L. Crozier, A-26209 (July 25, 1951). Where one fails to submit satisfactory evidence of his ownership of contiguous land within 30 days after the date of the sale, he loses his preference right to purchase the land. Fred and Mildred M. Bohen et al, 63 I.D. 65 (1956). A statement in the application for the sale of public land or those made verbally by the appellants that they own adjoining land is not sufficient proof of ownership of such contiguous land as required by the regulation 43 CFR 250.11 (b)(1)(ii).

Since the appellants failed to present any convincing evidence that the decision appealed from is erroneous, the award of the land to Mary L. Yerby will not be disturbed. Cf. Mendell P. Schneider, A-27891 (April 23, 1959).

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Estate of Mary L. Yerby
c/o Mr. Clarence E. Rust
Attorney at Law
5837 San Pablo Ave.
Oakland 8, California

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Mr. Benjamin F. Baer and Mrs. Frances D. Baer (Certified Mail)
Estate of Mary L. Yerby (Regular Mail)
Mr. Thomas G. Yerby Executor (Regular Mail)
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DEPT. OF INTERIOR
SACRAMENTO, CAL.
JUN 8 2 07 PM 1962

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 056661

May 31, 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

DECISION

Ivan M. and Ruby C. Hughes : Public Sale Application

Decision Vacated in Part
Case Remanded

Ivan M. and Ruby C. Hughes have appealed from a decision of the Manager, dated November 1, 1961, rejecting a large number of public sale, small tract, homestead, and recreation and public purposes applications. The appellants' public sale application was rejected by the decision. The Manager held that it would not be in the public interest to transfer title to any of the land described in the various applications until a detailed study of all the public lands in the area can be made. In this connection, he stated that the Bureau is presently engaged in an evaluation and inventory of the National Land Reserve to determine its potential uses, and that until this inventory and evaluation is completed no disposal of public lands will be made unless it is clearly shown that such disposition will serve a sound public purpose. The Manager reported, in addition, that the lands in the area may be potentially valuable for recreation in connection with a reservoir which will be created by the planned Auburn Dam, and that the lands are currently being managed for timber production, recreation, wildlife, watershed protection, and other uses.

In their appeal, the applicants state that the rejection of their public sale application is erroneous because the land for which they have applied is an isolated tract located near the Foresthill Elementary School, where the town of Foresthill is badly in need of suitable homesites. They contend that the development of the land for homes is more important to the people of Foresthill than public recreation, especially in regard to the particular tract of land for which they have applied.

The record shows that the land described by the appellants' application is isolated from other public lands and is approximately 20 acres in size.

As there has been no determination as to whether or not the land may be classified for phulic sale, the rejection of the public sale application was, in this particular case, premature.

Accordingly, the decision of the Manager is vacated insofar as it applies to the appellants' application, and the case record is remanded for further appropriate consideration. It should be noted, however, that the Geological Survey has reported that the land in question may be valuable for gold and manganese. If, upon an examination of the land, this is established, the sale of the land cannot be permitted under the public sale laws.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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SACRAMENTO, CAL.

JUN 8 2 08 PM 1962

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 051398

June 1, 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

DECISION

Gordon M. Jacobson : Public Sale Application

Decision Vacated in Part
Case Remanded

Gordon M. Jacobson has appealed from a decision of the Manager, dated November 1, 1961, rejecting a large number of public sale, small tract, homestead, and recreation and public purposes applications. The appellant's public sale application was rejected by the decision. The Manager held that it would not be in the public interest to transfer title to any of the land described in the various applications until a detailed study of all the public lands in the area can be made. In this connection, he stated that the Bureau is presently engaged in an evaluation and inventory of the National Land Reserve to determine its potential uses, and that until this inventory and evaluation is completed no disposal of public lands will be made unless it is clearly shown that such disposition will serve a sound public purpose. The Manager reported, in addition, that the lands in the area may be potentially valuable for recreation in connection with a reservoir which will be created by the planned Auburn Dam, and that the lands are currently being managed for timber production, recreation, wildlife, watershed protection, and other uses.

The appellant contends, in essence, that the Manager's decision was made without reference to the record in his case, was wholly arbitrary, and was not based on any factual material pertinent to his application. He states that the decision is an attempt to take the land from one citizen and give it to a class of citizens for purely recreational purposes, an exceedingly limited use of a seasonal character. He states further that the decision was not made under any existing law, but was made pursuant to proposed statutes which are not yet the law of the land. The appellant asserts that he originally made application for Lots 1 and 2 of Section 4, T. 14 N., R. 10 E., M.D.M., but that he subsequently eliminated Lot 2 at the request of the Bureau of Land Management. He asserts that there should be in the record some evidence of his conversation with representatives of the Bureau, who assured him that if he would eliminate Lot 2 from his application the sale to him of Lot 1 could and would be recommended. In conclusion, the appellant states that, as his application has been on file for more than six years, he does not wish to lose his place in the files of the Land Office.

The record shows that Lot 1 is an irregular tract, approximately 10 acres in size, bordered on all but its west boundary by lands in private ownership, some of which belong to the appellant, and that the appellant previously held the greater portion of the land under the Lucky Nugget Placer Mining Claim.

An examination of the record fails to disclose any evidence of the alleged conversations between representatives of the Bureau and the appellant relative to the elimination of Lot 2 from the subject public sale application. Nor does it show that the Bureau at any time represented to him that the sale of Lot 1 would be approved if the appellant did not press his application for Lot 2. However, as there has been no determination as to whether or not the land will be classified for public sale, and the appellant has filed his application as an adjoining land owner, the rejection of the application was, in this case, premature.

Accordingly, the decision of the Manager is vacated insofar as it applies to the appellant's application, and the case record is remanded for further appropriate consideration. It should be noted, however, that the Geological Survey has reported that the land in question may be valuable for gold and manganese. If, upon examination of the land, this is established, the sale of the land cannot be permitted under the public sale laws.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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Gordon N. Jacobson (Regular Mail)
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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 054709 ✓
056809 ✓

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June 5, 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

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DECISION

Colin T. Greenlaw et al.
Georgia A. Gardner

: Public Sale Applications

Decision Affirmed

Colin T., Etheleen M., Morrison B., and Helen R. Greenlaw and Georgia A. Gardner have appealed from identical decisions, dated March 29, 1962, rejecting their above-noted applications for Lot 39 and Lot 40 respectively [1] in Sec. 1, T. 12 N., R. 9 E., M.D.M. The rejection was for the reason that the lands applied for have been classified as unsuitable for disposition under the public sale law because, (1) they are isolated vacant national reserve lands lying approximately one mile southeast of the Middle Fork of the American River, branch of the proposed Auburn Lake and, (2) they are required for retention in Federal ownership pending the determination of their public recreational potential, and their value in exchange for lands required for public recreation.

In their separate appeals, the appellants assert, in substance, that (1) the lands in question are steep, rocky, covered with dense brush and totally without water, (2) they are more than a mile from the proposed Auburn Dam, have an elevation of more than 800 feet above the proposed high-water mark and are surrounded by contiguous private lands of which they are owners, and (3) there are no public roads in the area, nor any rights-of-way or access to the lands involved, all of which makes them totally unsuitable for any sort of recreational purposes.

The record shows that an examination of the lands, analysis of reports prepared by the Bureau of Reclamation and Park Service, have been made to determine what effect the proposed Auburn Reservoir would have on the future potentials of subject lands, but much detail is still lacking. For example, the exact location and re-location of roads which will have a direct effect on future use of specified lands have not been determined. The location of a road close to the lands involved would provide suitable access to permit their development for recreational purposes or homesites. Competition for lands in the vicinity of the proposed reservoir has forced prices of low quality lands from $12 to $15 per acre up to $200 to $300 per acre in the past 3 years. It would be premature to dispose of the lands prior to having full knowledge of changes which will affect land uses in the area of the proposed reservoir, constructed with Federal funds.

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[1] The supplemental plat of survey of Sec. 1, T. 12 N., R. 9 E., M.D.M., approved December 20, 1961, changed Lot 39 to Lot 11 and Lot 40 to Lot 10.

In exercising the discretionary authority vested in him, the Secretary of the Interior, or his delegate, may properly consider and weigh all factors bearing on the suitability of lands for use or disposal, including the effect on the public interest. Nelson A. Gerttula, 64 I.D. 225 (1957). It is apparent from the record that disposition of the lands at the present time would be contrary to the public interest and they were properly classified as unsuitable for disposition. Moreover, the filing of public sale applications does not require that the lands applied for be classified for disposition under the public sale laws. Garfield Taylor, A-28205 (April 26, 1960).

Accordingly, the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application upon which favorable action is sought. In taking an appeal, there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Colin T. and Etheleen H. Greenlaw (Certified Mail)
Morrison B. and Helen R. Greenlaw (Certified Mail)
Hughes, Maul and Fogerty, Attorneys for Georgia A. Gardner (Certified Mail)
Georgia A. Gardner (Regular Mail)
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SACRAMENTO, CAL.

JUN 18 10 00 AM 1962

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LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento
048396 ✓
059559 ← dismissed A-29685a
059465 ✓

affirmed A-29685
12-17-63 ltr Dearan

June 5, 1962

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Return Receipt Requested

DECISION

Frank L. Johnson	:	
James E. Dodd	:	Public Sale Applications
James Indart	:	

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, dated January 31, 1962, rejecting their above-identified public sale applications for the reason that the lands sought are an integral part of the National Land Reserve which is being inventoried and evaluated and sufficient data is not available at the present time to classify the land for disposition. The decision also stated that allowance of some of the applications would result in the fracture of government ownership patterns with consequent devaluation of the remaining public lands and there is no clear showing that disposition would be in the public interest.

The appellants contend that the lands are suitable for sale at public auction in that they are isolated or too rough for cultivation, that disposition of the lands would not fracture government ownership patterns or devaluate the remaining public lands, and that the public interest would be benefited by disposition because it would alleviate the problems of management by the Bureau.

Classification of lands for public sale by the Secretary or his delegate is discretionary. (43 U.S.C., 1958 ed., 315f) In this connection, it is well established that the Secretary or his delegate may consider all factors in classifying lands for use or disposal including the effect on the public interest. Cf. Nelson Gerttula, 64 I. D. 225 (1957) Moreover, the present land conservation program requires that classification of lands for disposal under the public land laws must meet the test of serving the public interest. The Manager's decision outlined the reasons for retaining the lands in public ownership. These reasons are more compelling than those offered by the appellants for disposal of the lands. The appellants' contentions, are unsupported, self-serving assertions which are not buttressed with any positive and substantive evidence to refute the findings made by the Manager or to show that the classification is in error. Cf. Mary Refugio Jackson, et al., A-27236 (February 29, 1956) In such circumstances the classification will not be disturbed on appeal.

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application adversely affected by this decision. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Gilmore & Gilmore, Agents for Frank L. Johnson (Certified Mail)
Mr. James E. Dodd (Certified Mail)
Gilmore & Gilmore, Agents for James Indart (Certified Mail)
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 046964
047476

July 5, 1962

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DECISION

Mario R. Colla : Public Sale Application

Decision Affirmed as Modified

The above-named party has appealed from a decision dated August 24, 1961, rejecting his above-identified public sale applications for the reason that the lands are needed for retention in Federal ownership as part of the Cedar Valley Management Unit, because of their value for grazing, recreation and timber management.

The appellant contends, in substance, that the findings in the decision appealed from are incorrect because (1) as to the grazing, there is no grass on the land, (2) as to recreational use, the area is not in the location where a hunter can walk to it for hunting; the deer in the area are few and far less than reported by the Bureau's field man, and (3) as to timber management, there is no timber on the land, the trees in the area are all scrub brush and scrub cedar that averages only two to four inches in diameter. The appellant states that he can prove all of his claims by meeting one of the Bureau's field men on the land.

A review of the records discloses that the Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior has made application for the withdrawal of part of the applied for lands described as Lot 3, SE$\frac{1}{4}$NW$\frac{1}{4}$, SW$\frac{1}{4}$NE$\frac{1}{4}$, Sec. 25, T. 11 N., R. 5 W., MDM, which by Public Land Order No. 2693 dated June 7, 1962 (27 FR 5609), were withdrawn from application under the nonmineral public land laws and from disposition under the homestead, desert land, and scrip selection laws. Therefore, the applications must be rejected as to the land included within the withdrawal.

As to the remainder of the lands, an intensive field examination has been made by Bureau personnel, and it has been determined that the lands should be retained in Federal ownership because of their value for multiple use for grazing, recreation (particularly hunting), watershed protection, and timber production. The field report indicates that the subject lands comprise key tracts, which connect two larger areas of public land, and disposal thereof would block off access to some 1600 acres of such public lands on the south. The administration, development and management of the remaining public lands in the area would be hampered if the subject lands were disposed of. It is doubted that the above-noted facts could be disproved even if the appellant were allowed to go upon the lands with Bureau field examiners.

It is well established that public land valuable for recreational purposes will be made available to the general public, rather than for disposition for private uses. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959). Moreover, the appellant has not presented any persuasive argument or positive evidence that the lands (not embraced in the withdrawal) are not needed for retention in Federal ownership.

Accordingly, the decision appealed from is affirmed as herein modified.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application included in the appeal. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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appeal to Sec. wyp
affirmed ltr Decision
A-29691 1-30-64

DEPT. OF INTERIOR
SACRAMENTO, CAL.
JUN 18 10 00 AM 1962
BUREAU OF
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LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 051024

June 7, 1962

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DECISION

Adrian Brothers : Public Sale Application

Decision Affirmed

The Adrian Brothers have appealed from the decision dated March 27, 1962, which rejected the above-noted public sale application because the land has potential value to the Bureau as a communications site or fire lookout station due to its location on top of a high ridge, or for exchange purposes in blocking out government units in the vicinity in connection with the Bureau's Panoche Hills Cooperative Management Area, and therefore is required for retention in Federal ownership.

On appeal the appellants contend, in substance that, (1) there is no access to the subject land, except across their deeded land, (2) the decision works an undue hardship on them because of fencing problems, (3) the subject land, except for possibly one corner is not situated on a ridge, but is situated on the side of a mountain, (4) the subject land has no value for exchange purposes since their deeded lands block access and, (5) the land has no value as a communications site because it is located on the side of the mountain, but they own the top of the ridge and are willing to enter into an agreement for the use of their property for such a site. The appellants also suggest that a " new hearing " be held in the matter.

The appellants' allegations have been carefully considered. It has been determined, however, that the refusal to classify the applied for land for public sale at the present time is proper, and is in conformity with the present land conservation program, which provides, in part, the sales or other dispositions of public land will not be made unless such disposition will serve a sound public purpose. The decision appealed from outlined the reasons for retaining the land in public ownership. The reasons given for the retention of the land in public ownership are more compelling than the reasons advanced by the appellants for the disposal of the land. In this respect, it is well established that the Secretary of the Interior, or his delegate, may properly consider and weigh all factors which have a bearing on the suitability of the land for use or disposal, including the effect on public interest. Cf. Nelson A. Gerttula, 64 I. D. 225 (1957). It is determined in the instant case that the public interest can best be served by retaining the land in Federal ownership. As to the appellants' suggestion that a new hearing be held in the matter, hearings are not generally held where the sole issue is the proper classification of the land. Cf. Ferris F. Boothe, 66 I. D. 395 (1959).

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals,
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UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 059831
060250

July 13, 1962

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DOCKET FILES

DECISION

Stephen R. Farrington Donald S. and Elbert H. Mendenhall	:	Public Sale Applications

Decision Affirmed

The above-named parties have appealed from a decision of the Chief, Land Section, dated April 11, 1962, which rejected their application for public sale for the reason that the land included therein has not been classified as suitable for public sale. The decision recited that the land is an integral part of the Scott Valley Management Unit and is indicated to be highly valuable for multiple-use management. The Unit contains a valuable stand of merchantable timber which is being managed on a sustained-yield basis. The land is also valuable for watershed control, grazing, recreation and as a wildlife habitat.

In their statements of reasons, the appellants in general deny the validity of the reasons given in the decision appealed from, but offer no substantial affirmative evidence to support their contentions.

After a review of the appeal and the entire record, it is concluded that the appellants' contentions do not adequately meet the burden of showing compelling reasons why the land has a greater value for the purpose sought by the applications and therefore suitable for public sale. It is a well established principle that an applicant for public lands, who appeals from an adverse classification, must show by submitting substantial affirmative evidence in what respect the classification is erroneous. Cf. Joseph M. Schuck, et al., A-28603 (August 16, 1961). This the appellants have failed to do.

Accordingly, the decisions appealed from are affirmed.

Stephen R. Farrington and Donald S. and Elbert H. Mendenhall are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application adversely affected by this decision. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. Stephen R. Farrington (Certified Mail)
Mr. Fred W. Burton, Attorney for Appellants (Certified Mail)
Messr. Donald S. & Elbert H. Mendenhall (Regular Mail)
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affirmed A-29863
12-27-63

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

IN REPLY REFER TO:
6.05c
Sacramento 058126
Public Sale

OCT 30 1962

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DECISION

Henry Dollarhide : Appeal From Decision of July 19, 1962
: Notice of Appeal Filed August 21, 1962

Appeal Dismissed

For the reason listed below your appeal to the Director, Bureau of Land Management, is hereby summarily dismissed (43 CFR 221.98):

☐ No statement of reasons has been filed in support of the appeal, and the time for filing the statement has expired (43 CFR 221.3).

☒ Your statement of reasons for your appeal (or your request for extension of time to file a statement of reasons) was filed in this office, but it was filed late. (43 CFR 221.3). The statement of reasons was transmitted to this office after expiration of the period allowed, and the delay in filing cannot be waived. (43 CFR 221.92(b)).

☐ You have not served the adverse party named in the decision appealed from with a copy of ☐ the notice of appeal, and/or ☐ the statement of reasons for the appeal, in the manner prescribed in 43 CFR 221.95. (43 CFR 221.4).

☐ Your appeal does not point out wherein the decision appealed from is believed to be in error and consequently you have failed to state reasons for the appeal, as required by the rules of practice. See Duncan Miller, 65 I.D. 292.

The dismissal of an appeal for failure to comply with the above requirements is mandatory. We have enclosed Form 4-1364 which contains the cited regulations.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 4-1365. 1/ If you do not appeal we will close the case and return the record to our State Director for further appropriate action. If an appeal is taken, the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

(Sgd.) Richard J. McCormick

Chief, Branch of Land Appeals
~~Chief,~~ Division of Appeals

Enclosures 2

1/ The adverse party to be served is: none.

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6.05c:MAGannon:yh 10-23-62

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Mr. [illegible] Attorney for Appellants (Certified Mail)
[illegible] (Regular Mail)
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appeal to Sec
Rejected in entirety Sec A 29787 - 5-4-64 ltr to

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
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BUREAU OF
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LAND OFFICE

DECISION

Adolph M. and Mary Edna Domengine : Public Sale Application

Decision Affirmed

Adolph M. and Mary Edna Domengine have appealed from a portion of the decision of the Chief, Land Section, dated March 8, 1962, which suspended action on their public sale application as it applied to the lands described as N½ Lot 6, N½NE¼ Sec. 30, T. 18 S., R. 15 E., M. D. M., pending completion of the inventory and evaluation required to determine the highest and best uses of the lands.

The record reveals that the subject lands are isolated, completely surrounded by the private lands of the appellants and are embraced in their ranching operation. These lands were applied for, along with other lands sought by the appellants. A portion of the other lands were withdrawn by Public Land Order No. 2460 of August 11, 1961, and designated as National Cooperative Land and Wildlife Management Areas, and the application was rejected as to these lands. Other lands were sought by appellants and action suspended on the application relative thereto but such action was not made a subject of this appeal; accordingly, the portion of the decision dealing with such lands is not an issue to be determined here.

On appeal, the appellants assert several reasons why they should be able to acquire the lands sought at this time. Their assertions, however, are all self-serving and based on their need for the lands. They have furnished no evidence to refute the findings made in the decision appealed from nor have they shown that disposal of the lands at this time would be in the public interest.

The Department has consistently held that the mere filing of a public sale application gives the applicant no right to the land but only the right to have the application considered. Roscoe T. Schafer, A-28131 (August 27, 1959). It is also well established that even though the land may appear to be suitable for disposition under the application, the land cannot be disposed of until it is first classified as suitable for such disposal. Cf. Nelson A. Gertulla, 64 I.D. 225 (1957). As noted in the decision appealed from, the Bureau is engaged in an inventory and evaluation of the public lands in the National Land Reserve, and pending completion of this inventory and evaluation, no disposal of public lands will be made unless it is clearly shown that disposition will serve a sound public purpose.

Moreover, the record reveals that appellants have held and are now in possession of the applied for lands under a grazing lease, and there is no indication that said lease will be terminated. Accordingly, no showing being made of an emergency or that disposal of the lands is in the public interest, the portion of the decision suspending action on that part of appellants' application appealed from is hereby affirmed.

Adolph M. and Mary Edna Domengine are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Mr. H. S. Gilmore, Agents for Appellants (Certified Mail)
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Miss Mary Edna Domengine (Regular Mail)
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appeal to Sec.

Affirmed
A-29833-11-26-63

In reply refer to:
6.05c
Sacramento 063392

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Bureau of Land Management
Washington 25, D. C.

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DECISION

October 11, 1962

Walker Engineering Corporation :
:
:
:

Application for restoration to mineral entry of land in first form reclamation withdrawal.

Application Rejected In Part

The Walker Engineering Corporation has filed an appeal in connection with a letter, dated May 8, 1962, addressed to its agents by the Acting Manager of the Sacramento Land Office, denying its application to have restored to mineral entry the public lands in section 7, T. 33 N., R. 5 W., M.D.M., California, which are in a first form reclamation withdrawal.

The record shows that on July 8, 1960, the appellant filed an application to have restored to mineral entry the public lands in section 7, T. 33 N., R. 5 W., and section 24, T. 33 N., R. 6 W., M.D.M., which are in first form reclamation withdrawals. On December 28, 1960, the Manager of the Sacramento Land Office issued a decision rejecting the appellant's application because the Acting Regional Director, Region 2, Bureau of Reclamation, had advised that the land involved was included in erosion control and reforestation programs, and that any mining development work on the land would be in conflict with the policy of the Bureau of Reclamation. An appeal to the Director, Bureau of Land Management, resulted, however, in a decision by which the Manager's decision was vacated for the reason that the Manager had no authority to take any action with respect to such an application. The Walker Engineering Corporation's appeal was dismissed as moot, and the decision stated that further consideration would be given to the application for restoration by the Bureau of Land Management's Washington, D. C., office. Walker Engineering Corporation, Sacramento 063392 (August 1, 1961).

Subsequently, the Assistant Secretary of the Interior opened section 24, T. 33 N., R. 6 W., M.D.M., California, to mineral location, entry and patenting under the United States mining laws by Public Land Order 2614, published in the Federal Register of February 24, 1962 (27 F.R. 1760), which provided for the opening of the land at 10:00 a.m. on March 24, 1962.

On March 19, 1962, the appellant's agent notified the Sacramento Land Office that they had been advised of the restoration of section 24, T. 33

N., R. 6 W., M.D.M., but that they had not personally had any notice of any decision, either favorable or unfavorable, regarding section 7, T. 33 N., R. 5 W., M.D.M. In response, the Acting Manager of the Sacramento Land Office wrote his letter of May 8, 1962, stating that the appellant's petition for the restoration of section 7 was denied. This is the letter from which the appellant has filed its appeal.

The appellant contends that, in view of the Bureau's decision of August 1, 1961, Walker Engineering Corporation, supra, the Sacramento Land Office had no authority to deny its application for the restoration of lands in section 7, and asserts that it has not had any decision that positively denies its application for the restoration of such lands.

In connection with applications for the restoration to mineral entry of lands included in reclamation withdrawals, the regulation 43 CFR 185.36(c) provides:

> "When the application is received in the Bureau of Land Management, if found satisfactory [complete], the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal."

While this regulation is not clear as to whether or not the initial rejection by the Bureau of Land Management of such applications should be made in local land office or in the Office of the Director, the fact remains that, if the report from the Bureau of Reclamation is adverse, the application must be rejected. The Bureau of Land Management has no discretion in such situations.

In the instant case, the Acting Commissioner of Reclamation, in a report of June 30, 1961, reaffirmed the recommendation of the Bureau of Reclamation's Acting Regional Director that no mining activities be permitted on the public lands in Sec. 7, T. 33 N., R. 5 W., M.D.M., California, which are in the Shasta Reservoir watershed where an eroision control and reforestation program is in effect. In view of the adverse report of the Acting Commissioner of Reclamation, the Bureau of Land Management has no alternative but to reject the Walker Engineering Corporation's application insofar as the lands in Sec. 7 are concerned.

Accordingly, the Walker Engineering Corporation's application for the restoration to mineral entry of the public lands in section 7, T. 33 N., R. 5 W., M.D.M., is rejected.

The Walker Engineering Corporation is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

John B. Piccolo
Chief, Branch of Mining
and Grazing Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Gilmore and Gilmore, Agents for the appellant (Certified Mail)
Walker Engineering Corporation (Regular Mail)
Hon. Clair Engle, United States Senate (Regular Mail)
Hon. Thomas H. Kuchel,,United States Senate (Regular Mail)
Hon. Harold T. Johnson, House of Representatives (Regular Mail)
Commissioner of Reclamation
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LAND MANAGEMENT

LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 12, 1962

DECISION

Stuart Hammond : Public Sale Application

Decision Affirmed

Stuart Hammond has appealed from the decision dated August 8, 1962,[1] which rejected the above-noted public sale application because the lands are potentially valuable for recreation and wildlife purposes, and are, therefore, required for multiple use management.

On appeal the appellant contends, in essence, that there is no timber, either merchantable, or non-merchantable, on this land; it has no water nor fishing and no potential (for developing either); it is entirely surrounded by privately owned land and has no access.

A review of the record indicates that this particular tract is part of the Bureau's Tehama Management Unit, and the appellant's application was not rejected because of timber values, as appellant believes, but because of the multiple use values of the land for recreation and wildlife purposes. Although there are no roads to this tract at the present time, timber values in the immediate vicinity indicate the possibility of timber access roads being constructed in the near vicinity if not to the land in question. Furthermore, it is the express policy of the Department to make public lands potentially valuable for recreational purposes available to the general public and not allow them to pass into private ownership. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959).

Accordingly, the decision appealed from is affirmed.

Stuart Hammond is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

---

[1] The decision also rejected 12 other public sale applications.

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DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
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Sacramento 066019

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SACRAMENTO, CAL.
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appeal to Sec.
affirmed - Sec Decision
A-29864 8-2-63

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October 23, 1962

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DECISION

John F. Giusto	:	Public Sale Application
Nick D. Giusto	:	

Decision Affirmed

John F. and Nick D. Giusto have appealed from a decision, dated June 4, 1962, rejecting their above-noted public sale application for Lot 1 Sec. 9, Lots 7 and 8, Sec. 10, T. 3 S., R. 16 E., M.D.M., for the reason that the lands are not suitable for disposition under the Public Sale Act because, (1) they lie within the Tuolumne-Mariposa-Madera Program Area which is being managed actively by the Bureau's Sacramento District for grazing, forestry, recreation, watershed, and wildlife purposes, (2) they are an integral part of the proposed 70,000 acre "Merced River Recreation Area", and (3) the three lots are presently leased for grazing, contain a cooperative fence constructed in 1956 under authority of the grazing lease and they have an unimpeded public access from State Highway 49.

The record shows that by Bureau decision of February 26, 1962, the Manager's decision of June 12, 1961, which first rejected the application, was vacated and the case remanded to the Sacramento Land Office, through the California State Director, for a more thorough study and consideration with respect to whether it would or would not be in the public interest to dispose of subject lands. Pursuant to the Bureau decision of February 26, 1962, a detailed on the ground field examination by Bureau personnel was made on May 2, 1962. The field report, substantiated by maps and photographs, disclosed that, in addition to the findings in the decision from which the appeal is taken, subject lands are located 2¼ miles north of Merced River and 1½ miles northeast of Exchequer Reservoir. They are a part of a large block of public land and are within the Merced River Recreation Area. Full development of the river is scheduled under a Federal power project No. 2179 pursuant to directives of the Secretaries of the Departments of the Army and Interior for the purpose of hydro-electric power, flood control, irrigation and recreation. The Federal power Act authorizes contributions towards construction costs of the multipurpose Merced River development and a large recreation area is presently being planned by 2 of 5 agencies involved for the immediate and general area of the river. Other concerned agencies of these 5 will become actively involved later, both in planning and effecting a balanced use management program for the area. Although the three lots neither lie on the river nor the reservoir they are an integral part of both the planned Merced River Recreation Area and the Merced River water development and their highest and most beneficial use, and in the best interest, of the public is to retain them in Federal ownership for watershed values and recreation which would include hunting, fishing, camping, hiking, picknicking and other related uses.

A careful review has been made of the statement of reasons submitted by the appellants in support of their appeal. It is concluded that the appellants have not presented any positive or probative evidence that the classification action is in error, and the assertions contained in their appeal consist merely of unsupported statements to the effect that "most, if not all", of the findings in the decision appealed from are general and entirely without merit and the land involved should be classified for public sale.

The mere filing of a public sale application does not require that the land applied for be classified for disposition under the public sale laws. Garfield Taylor, A-28205 (April 26, 1960). Moreover, in exercising the discretionary authority vested in him under section 7 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 1958 ed 315f), as amended, the Secretary of the Interior, or his delegate, may properly consider and weigh all factors bearing on the suitability of land for use or disposal, including the effect on the public interest. Nelson A. Gerttula, 64 I.D. 225 (1957); Ferris E. Booth, 66 I.D. 395 (1959). It is apparent from the record that the highest and best use of the lands are for watershed and recreation purposes, and their disposition would not serve a sound public purpose or be in the public interest.

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended.

See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

H. S. Gilmore, Agent for Appellants (Certified Mail)
John F. Giusto and Nick D. Giusto (Regular Mail)
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affirmed ltr Decision

A-29880
8-2-63

ltr Dec.

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6.05c
Sacramento 060742
062929

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 16, 1962

Certified Mail
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DECISION

Dante L. Albasio :
: Public Sale Applications
Romie Rolleri :

Decisions Affirmed

Dante L. Albasio and Romie Rolleri have appealed from separate decisions dated July 24, 1962, rejecting their above-noted public sale applications for Lots 3, 5, 6, and 9, Section 11; Lots 6, 18, 21, 22, and 25, Section 3, respectively, in T. 2 N., R. 13 E., M.D.M., California. The rejection was for the reasons that (1) the lands have a very high recreational potential because of proximity to the locale of the New Melones Dam and Reservoir project of the Corps of Engineers, Department of the Army, (2) the lands lie within, or are in close proximity to, proposed major access routes and proposed picnicking and camping areas, and (3) according to a United States Geological Survey report the lands may be valuable for gold.

The appellants contend, in substance, that the applied for lands are not valuable for gold, have no present or potential recreational value, their only value being for grazing, and for these reasons their applications should be allowed.

The contentions of the appellants are without merit.

The applicable regulations, 43 CFR 250.8 provides that mineral lands may not be sold at public auction except under specific authority which exists for the sale of lands with a reservation of those minerals to the United States. Lands which are valuable or prospectively valuable for leasable minerals such as oil and gas, coal, phosphate, etc., may be disposed of with an appropriate reservation of such minerals to the United States. However, lands which are valuable for metaliferous minerals such as gold silver, lead, etc., and locatable under the mining laws are not subject to disposal with a reservation to the United States and applications for the sale of such lands must be rejected. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959). While the Geological Survey reports that the lands may be valuable for gold, the fact that the lands are located adjacent to patented mining claims is a good indication that the lands are mineral in character valuable for gold. The appellants have furnished no factual data or substantial evidence showing that the lands are not valuable for gold.

Even if the lands were not mineral in character, they have been examined by Bureau personnel and have been found to be highly valuable potentially for recreational purposes for hunting, fishing, hiking, camping, picnicking, horseback riding, and various forms of nature study because of their location in close proximity to the proposed New Melones Dam and Reservoir to be constructed by the Corps of Engineers, U. S. Army, on the Stanislaus River. The lands are also close to proposed access roads to be constructed and which will connect them with other recreational areas in the vicinity of the Reservoir. It has been determined that the land should be retained in Federal ownership for multiple-use management in connection with the Reservoir.

It has been consistently held by the Department that public sale applications for public lands are properly rejected when the lands are highly valuable for recreational purposes. Lafayette M. Hughes, A-27213 (December 28, 1955); Paul H. Orgish et al., A-28560 (February 12, 1962). The appellants have not submitted any positive or substantial evidence showing that the lands are not valuable for recreational purposes or that the classification of the lands as not suitable for disposal at public auction is in error, and the classification will not be disturbed. Cf. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Accordingly, the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision, the total filing fee is $10. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Joseph H. Huberty, Attorney for appellants(Certified Mail)
Dante L. Albasio (Regular Mail)
Romie Rolleri (Regular Mail)
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6.05c
Sacramento 060276

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

December 5, 1962

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DECISION

George Marian Grieb : Public Sale Application

Decision Vacated

The above-named party has appealed from a decision dated April 9, 1962, rejecting his above-identified public sale application, among others, because the lands have been classified as unsuitable for title transfer under the Public Sale Act since they are an integral portion of the National Land Reserve within or adjacent to the Bureau of Land Management's Hornbrook Management Unit in Siskiyou County; and the existing management plan and studies conducted by the Department of Water Resources, State of California, indicate this area is highly valuable for mutiple use management. The decision also recites the following additional reasons for rejecting the application:

1. The lands within and adjacent to the Hornbrook Management Unit are extremely valuable for public recreation. These lands have been rated as a high intensity recreation area, and also likely to become urban or suburban in character.

2. All of the lands are excellent for hunting and are a winter range for deer. Portions of Cottonwood Creek are king salmon spawning areas.

3. All of the lands are under grazing lease. Several Bureau and cooperative projects have been constructed on the lands, which include stock reservoirs, fencing, seeding projects, and access roads.

4. Access is of vital importance in the Hornbrook area. With an accelerated right-of-way acquisition program by the Bureau, thousands of acres of public land will be made available for hunting, fishing, riding, hiking, picnicking, and other types of recreation. The loss of any tracts with access already available would not be in the public interest.

The appellant contends, in substance, that (1) the piece of land for which he filed an application does not join any government land but it is an isolated 80 acres that is enclosed in his fence; up to the time the Bureau of Land Management took this isolated 80 acres over, the "Forestry" had charge of it and it had been leased to his ranch for years;[1] due to location and type of land, it would not be feasible for recreation, urban or suburban development, (2) since this is only 80 acres and is surrounded by privately owned property, it is not readily accessible for public hunting; it is best suited for spring grazing of cattle, (3) since the Bureau of Land Management took this [land] over, his ranch has not been able to buy or lease this isolated 80 acres; to his knowledge, there has not been any physical, on the spot, survey of the land since he owned the ranch; there has been no cooperative projects constructed on the property in question such as stock reservoirs, fencing or reseeding projects, and (4) there is no access road; the only way to reach the isolated 80 acres is by foot or on horseback through privately owned land.

There is nothing in the record that would refute the allegations made by the appellant, nor is it clear in what way the reasons given for the rejection of the appellant's application particularly apply to the lands involved therein.

Accordingly, the decision appealed from is **vacated**, and the case is remanded to the State Director for California for further appropriate consideration.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

---

[1] The lands were withdrawn for the Hornbrook Administrative Site for the use of the United States Forest Service, Department of Agriculture, until August 21, 1959, when they were restored therefrom to the National Land Reserve.

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appeal to Sec
Dismissed A-29972
5-23-63

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Sacramento 054933 etc.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 9, 1963

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DECISION

Henry F. Kolar : Public Sale Applications
Diamond National Corporation :

Decision Affirmed

The above-named applicants have appealed from a decision, dated June 8, 1962, which rejected their public sale applications[1] for the reasons that the subject lands comprise approximately 14,000 acres of an area presently being evaluated for its multiple use of the natural resources; that it has been determined that the subject lands are either timbered or suitable for rehabilitation with an approximate value of $2,000,000; that the specified tracts have considerable value for public recreation; and that the factors of isolation are in many instances to be balanced against the access to the Feather River Program Area provided thereby.

Appellant Kolar in his statement of reasons presents arguments to the effect that (1) the subject lands are adjacent to and adjoin lands owned by appellant, (2) appellant desires ownership of the subject lands because as now constituted they are a fire hazard and he would remove all down brush, rotten snags and logs before planting more trees, and (3) the subject lands are steep, hilly, and filled with lava rock and consequently should be considered to be rough or mountainous.

The other appellant, Diamond National Corporation, contends that each parcel of land applied for is isolated and either completely surrounded or adjacent to Diamond National timberland ownership. Moreover, it is asserted that the lands are considered wildlands, contain no improvements except unimproved roads which traverse the parcels in some instances, and should be managed for timber production for fire protection. Regarding the reasons for rejection, appellant states that "In no case are these parcels an essential means of public access to adjacent or surrounding public lands. Neither are they an essential means of public access to improved recreational areas. Also, in no case is recreation the chief value of this land either at present or in the forseeable future. Only four parcels contain fishable streams. Actually, recreational use is negligible at the present time."

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[1] Applications involved are listed in the attached appendix.

The essence of the latter appellant's arguments appear based on management policies. It is contended that Diamond National Tree Farms are managed primarily for timber production but recreation for numerous forest visitors is furnished. Included in the program is camping, picnicking, hiking, riding, fishing and hunting. Accessibility is the key to forest recreation, and managed forests are accessible through their systems of logging roads. Except on those company roads where logging is actually in progress and in areas of extreme fire hazard during critical periods, the public has been allowed to use the lands and these roads. Appellant concludes, "We are convinced that the high type of management and protection that we give to our timberlands in not only essential to the interests of our Company but important to the citizens of our State and Country."

At the outset, appellants have the burden of showing by substantial affirmative evidence compelling reasons why the refusal to dispose of the subject lands by public sale should be abandoned. However, it is important to remember that there is no particular set of circumstances or formula which necessarily requires that the Federal Government relinquish ownership of the subject lands in controversy. The Secretary of the Interior, or his delegate, may properly consider and weigh all factors which have a bearing on the suitabllity of the land for the particular use requested, including the effect on the public interest, but is under no compulsion to classify on such basis the lands for public sale. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957).

It is the current program of the Department that disposition of public lands will not be made unless the disposition will serve a sound public interest. In event of disposition of and issuance of patent on the applied for lands, management of such lands by the Bureau of Land Management would be automatically terminated. There would be in such circumstances no control of these lands for multiple use and to provide access to the Feather River Program Area. Accordingly, it is entirely conceivable that the public interest could be adversely affected by disposal of the lands in controversy to appellants.

Moreover, we think reasons presented by appellants clearly uncompelling to facilitate a classification in favor of their interests. While it is true that the Government would naturally favor a management program which is designed to protect the subject and adjacent lands from fire hazards, the question becomes one of whether public or private management should be utilized. In this connection, the Department has held that an application for public sale is properly rejected for land that is chiefly valuable for timber production and should be retained in public ownership for timber management and watershed protection. Garfield Taylor, A-28205 (April 26, 1960).

Therefore, the decision appealed from is affirmed.

Appellants are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5 for each application upon which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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APPENDIX

	Sacramento Serial Number
Henry F. Kolar	049203 065491
Diamond National Corporation	054933 058954 054965 056218 059775 061449 061989

appeal to Sec,
affirmed A-29943
Ltr Deason 12-3-63

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DECISION

Dean Priddy and
Fred Klein : Public Sale Application

Decision Affirmed

Dean Priddy and Fred Klein have appealed from a decision dated July 19, 1962, rejecting their above-identified public sale application for the reason that it was determined the lands should be retained in Federal ownership as part of the National Land Reserve because of their value for public recreation (fishing and hunting), wildlife conservation, forest resource management, watershed and other multiple-use purposes. The findings in the decision appealed from were based on data assembled in field examinations of the lands which revealed that public sale at this time would not be in the public interest.

The appellants deny the validity of the reasons for rejection given in the decision appealed from. They assert, in essence, that after restoration of the applied for lands from powersite reservation was accomplished they were informed by Bureau of Land Management personnel that they were free to proceed in their efforts to obtain the lands and were assured of a final chance to bid on the lands as adjoining landowners. The appellants state they thereupon arranged to purchase an adjoining tract of 240 acres and to lease a 330-acre parcel joining that tract. Their intention was to develop these lands together with the public lands applied for into a productive area through a program of clearing, seeding, and the raising of cattle or dry farm grain, which they contend are the only purposes for which the lands are suitable.

The appellants further allege, in substance, that use of the lands for public recreation is not feasible, first, because the lands are inaccessible except by trespass over private property, and for additional reasons. Next, they contend that the lands are not suited to good timber production and adverse topography makes logging difficult. The appellants also maintain that watershed management is precluded since the stream's course is through a deep, rocky gorge with no possible dam sites or alterations of course.

The appellants' contentions, unsupported by any positive and substantial evidence, fail to disprove the basic findings in the decision appealed from.

The filing of a public sale application does not require that the lands applied for be classified for disposition under the public sale laws. Garfield Taylor, A-28205 (April 26, 1960). Classification of lands for public sale by the Secretary, or his delegate, is discretionary (43 U.S.C., 1958 ed., 315f). It is well established that the Secretary, or his delegate, may consider all factors in classifying lands for use or disposal, including the effect on the public interest. Cf. Nelson A. Gerttula, 64 I.D. (1957).

It is apparent from the record that the highest and best uses of the lands are for public recreation, wildlife conservation, forest resource management, watershed and other multiple-use purposes. Therefore, the reasons outlined in the decision appealed from for retaining the lands in public ownership are more compelling than those offered by the appellants for disposal of the lands.

The decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Messrs. Dean Priddy and Fred Klein (Certified Mail)
Division of Lands and Recreation
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appeal to Sec
affirmed A-29927
11-26-63

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LAND OFFICE
SACRAMENTO, CALIF.
JAN 22 1963

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 052159

January 14, 1963

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DECISION

Leonora W. Luntsford : Public Sale Application

Decision Affirmed

The above-named party has appealed from the decision dated August 8, 1962, which rejected her public sale application because the lands were withdrawn from all forms of disposition under the public land laws for purposes of a National Cooperative Land and Wildlife Management Area.

A review of the record reveals that the appellant's public sale application was filed April 25, 1956. There was, however, a prior application, Sacramento 051807, for withdrawal of the subject lands by the Fish and Wildlife Service under the coordination Act. This prior application segregated the subject lands until action had been completed thereon. The public sale application was suspended by decision dated May 6, 1958, pending completion of adjudicative action on the withdrawal.

The withdrawal, subject to prior existing valid rights, was accomplished by publication of public land order No. 2693 in the Federal Register on June 13, 1962, and took effect immediately. The Department has consistently held that land subject to a withdrawal cannot be sold at public sale and applications filed while the withdrawal remains in force are properly rejected. Cf. Consummers Agency, Inc., A-28899 (August 3, 1962). Also Cf. Carl and Alvina Kidman, A-28898 (August 8, 1962).

The contentions of the appellant have been carefully considered and are found to be without merit since the lands are not subject to disposition under the public land laws. Furthermore, the mere filing of a public sale application does not constitute a valid existing right, but merely the right to have such an application considered.

Accordingly, the decision appealed from is hereby affirmed.

Leonora W. Luntsford is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Gilmore & Gilmore, agents for the appellant (Certified Mail)
Leonora W. Luntsford (Regular Mail)
Hon. Clair Engle, United States Senate
Hon. Edmund G. Brown, Governor, State of California
Hon. Harold T. (Bizz) Johnson, House of Representatives
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A.M. 7|8|9|10|11|12|1|2|3|4|5|6 P.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 055725

Public Sale Application

February 12, 1963

DOCKET FILES

The decision issued by the Division of Appeals, dated February 5, 1963, in Sacramento 055725, is incorrect in the last sentence in the last paragraph on page 1 beginning at the bottom of page one and continuing on page two with respect to the citation of "26 F.R. 1382 (February 16, 1961)." The sentence referred to is corrected to read as follows: "In this respect the conservation policy for the public lands announced by the Secretary of the Interior February 14, 1961, provides, in part, that sales or other disposition of public lands will not be made unless such disposition will serve a sound public purpose including the satisfaction of bona fide needs of the general economy and improving the administration of public lands.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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DOCKET FILES

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 055725

February 5, 1963

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DECISION

Jack C. Gutte : Public Sale Application

Decision Affirmed

Jack C. Gutte has appealed from a decision, dated October 12, 1962, rejecting his above-noted public sale application for the reason that it would not be in the public interest to dispose of the applied for land because (1) the land provides access to a large parcel of the national land reserve, (2) the subject land is valuable for timber management purposes and along with other nearby lands is within the Clear Creek Timber Management Unit, and (3) since the terrain is mountainous, management of the forest cover on subject land is highly desirable for watershed control purposes.

The appellant alleges that it was error to reject his application for the reasons stated. He further asserts in substance, among other things not material to the issue, that subject land and adjoining public domain lands are no part of a timber growing area, nor are they valuable for timber management because of their limited isolated acreage and the timber, such as it is, is being rapidly destroyed by pine beetle. These lands are sparsely timbered, afford no watershed protection, are entirely without water, and it could not possibly be economical or advisable for the Government to salvage the 80 acres under application adjoining his private land. He submits a sketch map purporting to show the status of lands in the area and states that subject land could be sold, reserving a right-of-way for access to the remaining public lands.

However, the appellant fails to submit positive and substantial evidence showing wherein the findings in the decision from which an appeal is taken are erroneous.

In exercising the discretionary authority vested in him by Section 7 of the Taylor Grazing Act, as amended (43 U.S.C. 1958 ed., 315 f), the Secretary of the Interior, or his authorized delegate, may properly consider and weigh all factors which have a bearing on the suitability of land for use or disposal, including the effect on the public interest, Nelson A. Gerttula 64 I.D. 225 (1957); Ferris E. Booth, 66 I.D. 395 (1959). In this ~~connection~~ Respect the Bureau's program for the National Land

See Memo to Dir 2-12-63
for correction attached

Reserve, 26 F.R. 1382 (February 16, 1961), provides, in part, that sales or other disposition of public lands will not be made unless such disposition will serve a sound public purpose, including the satisfaction of bona fide needs of the general economy and improving the administration of public lands.

From a review of the record, it is concluded that the best use of the subject land is to provide access to other lands, timber management, watershed purposes to conserve groundwater and to control erosion, and that disposition of the land would not serve a sound public purpose or be in the public interest.

Accordingly, the decision appealed from is affirmed.

Jack C. Gutte is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington 25, D. C. and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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appeal to Sec
Dismissed
A-29978
5/23/63

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 4 10 00 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 073324
073325
February 20, 1963

DOCKET FILES

Certified Mail
Return Receipt Requested

DECISION

Santa Cruz Lumber Company : Public Sale Applications

Decisions Affirmed

The above-named party has appealed from a decision dated October 15, 1962, rejecting its above-identified public sale applications for the reasons that (1) title to part of the land embraced therein has been conveyed to the State of California, and (2) it has been determined that the remainder of the lands has high public recreational values and the lands are more suitable for use or disposal under the Recreation and Public Purposes Act of June 14, 1926 (43 U.S.C. 869; 869:1-4), as applied for by San Mateo County under its application Sacramento 070406. The appellant has also appealed from a decision of November 14, 1962, which allowed the recreation and public purposes application filed by San Mateo County, and dismissing the appellant's protest against such allowance.

The appellant contends, in substance, that (1) contrary to statements made by Government investigators there is not now access to the lands in question, (2) the County of San Mateo has no well developed plan of recreational development within the area, (3) although the County might have plans for the future use of the property, it has no recreational plan for this area and the Government should note this fact, and (4) to permit property that had previously been offered to the tax paying public for $43,500 to be offered for $2.50 an acre is a fraud on the tax payers in the immediate area; the property should either remain as Government property or be purchased by private interests, which would remain on the tax rolls, or should not be purchased at all by a local government agency.

The contentions of the appellant, which contain, for the most part, nothing but self-serving statements, are considered to be without merit.

The record shows that the lands are located some 7 air miles east of Pescadero, California, and 2 miles south of La Honda. Because of the year round mild climate and high population density of the service area, the lands will be used by the public for hiking and riding on a year round basis, and are highly suitable for the use intended to be made of them by San Mateo County. The County has submitted a plan of development in sufficient detail and so illustrated as to present a clear picture of need and program of development. Current and planned use of the lands is part of a 30-year approved program of multi-county uses. Present county planning provides for the expansion of the county program to make the area more attractive and available to a larger portion of the general public.

It is well established that a public sale application is properly rejected where the land applied for has been classified as valuable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended. Roscoe T. Schafer, A-28131 (August 27, 1959); see also Lafayette M. Hughes, A-27213 (December 28, 1955).

Accordingly, the decisions appealed from are affirmed.

The Santa Cruz Lumber Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5 for each application upon which favorable action is sought. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is taken, the adverse party to be served is:

County of San Mateo
Hall of Justice & Records
Redwood City, California

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Bancroft, Avery & McAlister, Attorneys for Appellant (Certified Mail)
Santa Cruz Lumber Company (Regular Mail)
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SACRAMENTO. CAL.

MAR 4 10 00 AM 1963

BUREAU OF
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LAND OFFICE

In reply refer to:
6.05c
Sacramento 073334

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 21, 1963

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DECISION

Horace J. and Estelle Stevens : Public Sale Application

Decision Affirmed

Horace J. and Estelle Stevens have appealed from a decision, dated November 1, 1962, which rejected in part their application for public sale. The decision held in substance that certain lands included in the subject application and described as Lot 6 Sec. 12, T. 33 N., R. 11 W., M.D.M. were withdrawn for power purposes in Power Site Classification No. 117, October 1, 1925. It was also stated that lands classified or reserved as power sites are not open to public sale disposition until the lands have been restored to entry pursuant to Section 24 of the Federal Power Act.

Appellants have not in any way attempted to dispute the authority relied on in the decision appealed from. They merely request the subject application be held in abeyance until such time as an application to the Federal Power Commission for a restoration of the withdrawn land has been acted upon.

At the outset, it is fundamental and in accord with Departmental policy that all applicants for public sale be afforded an equal opportunity. Therefore, a prematurely filed application cannot be held and accorded a priority if and when the lands subsequently become available for disposition. Accordingly, appellants' application was properly rejected. Frank J. Schultz, A-28575 (February 7, 1961).

Appellants will, however, be eligible to file a new application at any time that the withdrawal is revoked and the land is opened to disposal at public sale, or submit a bid if the land is offered for sale.

The decision appealed from is affirmed.

Appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Regan and Kennedy, Attorneys for Appellants (Certified Mail)
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In reply refer to:
6.05c
Sacramento 054006

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SACRAMENTO, CAL.
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BUREAU OF
LAND MANAGEMENT

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

March 8, 1963

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DOCKET FILES

DECISION

Garrett H. Rosenberg :
William K. Rose : Public Sale Application
:
:

Decision Affirmed

Garrett H. Rosenberg and William K. Rose have appealed from a decision, dated December 26, 1962, rejecting their above-noted public sale application because it had been determined that the disposal of the applied for lands under the Public Sale Act would not be proper. The stated reasons for this determination were: (1) the lands involved are within easy driving distance from the densely populated San Francisco Bay area and, together with an additional 3,000 acres of public land lying in the northeastern portion of the same township, are highly valuable for public recreational purposes, especially deer hunting, and the demand for public hunting land in the area exceeds the supply, and (2) allowance of the application would be unwise and contrary to sound planning and conservation policies.

The appellant asserts that the lack of public roads to the subject lands renders them inaccessible to the public for deer hunting; that to permit deer hunting on the lands would encourage trespassing on private land and possible detriment to livestock and mining operations in the area; that fire hazard would be increased by deer hunting at a time of year when conditions are extremely dangerous; and that the lands involved are very rough, steep and covered with a thick growth of thorny brush making passage by any means almost impossible, thus making the lands unsuitable for hunting.

The Department has consistently held that a public sale application is properly rejected where the land applied for has been classified as valuable for recreational purposes. Roscoe T. Schafer, A-28131 (August 27, 1959); Paul Orgish et al., A-28560 (February 12, 1962). Moreover, in exercising the discretionary authority vested in him under section 7 of the Taylor Grazing Act (43 U.S.C. 1958 ed. 315f), as amended, the Secretary of the Interior, or his delegate, may properly consider and weigh all factors bearing on the suitability of land for use or disposal, including the effect on the public interest. Nelson A. Gerttula, 64 I.D. 225 (1957).

It appears from the record that the highest and best use of the subject lands is for recreational purposes. The appellant has presented no positive, substantial evidence that the classification of the lands is erroneous.

Accordingly, the decision is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Garrett H. Rosenberg (Certified Mail)
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appeal to Sec
affirmed A-30015

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UNITED STATES 4-6-64
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 073321

March 27, 1963

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DECISION

Marion E. Beresford : Public Sale Application

Decision Affirmed

Marion E. Beresford has appealed from a decision, dated November 26, 1962, rejecting her above identified public sale application. The stated reason for the rejection was that the applied-for land has been determined to be mineral in character, valuable for gold, and is not subject to disposal under the public sale law.

The appellant makes the following allegations:

1. There are not sufficient gold deposits in the land to warrant a mineral patent.
2. A mineral patent was denied Edward W. Holland in 1960 for the subject land.
3. She filed for the surface rights only and is not interested in the mineral rights.

A report of mineral examination by a Bureau Valuation Engineer shows that the land applied for is an isolated tract containing approximately 16 acres embraced in the Yankee Hill lode mining claim. This claim is situated within the East Belt of the Mother Lode. The Mother Lode is a zone containing numerous quartz veins, many of which have been important producers. The East Belt of the Mother Lode carries rich veins of gold quartz. Patented mines within one mile of the Yankee Hill lode claim have had a total production of about $100,000. The Yankee Hill lode claim was located on January 1, 1920 by Warren Holland and is still owned by him. Proofs of labor have been filed from 1920 through 1962. The development in the mine consists of 6 tunnels totalling 343 feet in length costing $3,430. Mr. Holland withdrew his application for patent only after he failed to meet the requirements of the "prudent man doctrine". However, investigation of the mining claim revealed that the claimant is still prospecting diligently and does not use the claim for purposes other than mining, and there is evidence that one tunnel contains $60. per ton ore in place. Thus, based upon these facts and geological inference, there is support for the conclusion in the Land Office decision, that the land in issue is mineral in character.

The Department has held that lands which are valuable for minerals that are locatable under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxson, A-27402 (December 17, 1956).

The appellant has not submitted adequate reasons and evidence to warrant any change in the Land Office determination. William W. Cheetham, A-29098 (December 10, 1962).

Accordingly, the decision is affirmed.

Marion E. Beresford is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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6.05c
Los Angeles 0161962

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 20, 1963

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DECISION

A. L. Brosio Company : Public Sale Application

Decision Affirmed

A. L. Brosio Company has appealed from a decision, dated February 20, 1963, rejecting its public sale application for the reason that offering the lands sought at public sale would not be in the public interest because of their value for retention in Federal ownership for multiple use management, especially for outdoor recreation and grazing.

The appellant contends, in substance, that the retention of the lands would not be in the public interest, asserting they are dissimilar to the two parcels of adjacent public land which the County of San Diego has requested for park purposes; that the finding in the decision appealed from is not based upon a detailed examination of the lands. The appellant also asserts that the lands do not constitute the "heart" of a grazing lease as stated in the Land Office decision, but constitute only a minor portion of the periphery of the lands held under grazing lease, and that the lands apparently are not being used for grazing purposes by the lessee.

The showing on appeal has been considered, together with data assembled by qualified land examiners of the Bureau and reports which provided the basis for the rejection of the appellant's application. The appellant's assertions are found not to be supported by any positive, substantial evidence that retention of the lands in Federal ownership is inconsistent with proper land management or that the public interest would otherwise be served by disposal of the land at public sale.

The public sale law being a permissive statute, determination as to whether or not lands applied for thereunder shall be disposed of at public sale is within the discretionary authority vested in the Secretary of the Interior, or his duly authorized delegate. Monolith Portland Cement Company, A-28728 (July 12, 1962). If it is determined that disposal will not be in the public interest, sale will not be authorized.

The refusal to designate the lands described in the appellant's application as suitable for offering at public sale is in conformity with this Bureau's land conservation program, which provides, in pertinent part, that sale or other dispositions of public land will not be made unless such a disposition will serve a sound public purpose. On the basis of the record, it appears the refusal to offer the applied for lands at public sale was proper.

Accordingly, the decision appealed from is affirmed.

A. L. Brosio Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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A. L. Brosio Company
Division of Lands and Recreation
Appeals List No. 1
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DEPT. OF INTERIOR
SACRAMENTO, CAL.

AUG 28 10 09 AM 1963

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LAND OFFICE

In reply refer to:
6.05c
Sacramento 060374

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 24, 1963

DECISION

Samuel K. and Isabella K. Talley : Public Sale Application

Decision Affirmed

The above-named parties have appealed from the decision of the land office at Sacramento, California, dated May 17, 1962, rejecting their application for the reason that the lands were not classified as suitable for disposal at public sale because of their higher use for public recreation and timber management.

The appellants contend, among other things, that (1) the use of the land for agricultural purposes is in the highest overall public interest; (2) classification for public recreational or small tract purposes would be an irrevocable loss to the public welfare and an unpardonable betrayal of public trust; (3) the Bureau of Reclamation has classified the land as agricultural in character as has the Board of County Supervisors; (4) the land is several miles from designated recreational areas, and (5) the land and timber thereon could be sold at public auction and the government would receive full value for the land and timber.

The public sale law (43 U.S.C., 1958 ed., sec. 1171) authorizes the Secretary of the Interior to offer for sale lands which in his judgment or discretion would be proper to sell. Whether particular lands are to be sold or not is a matter committed wholly to his discretion. Moreover, it is the express policy of the Department of the Interior to make public lands valuable for public recreational purposes available to the general public rather than to allow an individual to gain control of them. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959).

A careful review of the record reveals that the Bureau personnel, who examined the lands, ascertained all relevant and material facts bearing on the character and use of the lands and came to a considered and informed judgment as to their unsuitability for public sale. The appellants have submitted no substantial or persuasive evidence that the land office action was based on error of fact or judgment.

We conclude that the rejection of the application was consistent with the facts and entirely proper.

Therefore, the decision appealed from is hereby affirmed.

This decision constitutes a final administrative determination of the Department in the matter. 43 CFR 221.31.

Charles H. Stoddard

Director

Approved: AUG 13 1963

John A Carver Jr

Assistant Secretary of the Interior

DISTRIBUTION

Hon. Harold T. (Bizz) Johnson, House of Representatives.
Samuel K. and Isabella K. Talley
Appeals List No. 1
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In reply refer to:
6.05c
Sacramento 072930

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AUG 2 2 42 PM 1963
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LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 30, 1963

Certified Mail
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DECISION

Russell D. Wilhoit	:	Public Sale Application

Decision Affirmed

Russell D. Wilhoit has appealed from a decision, dated March 29, 1963, rejecting his public sale application for the reasons the land is appropriated under the mining laws and a validity determination of the mining claim is not contemplated at this time.

The appellant alleges as follows:

1. There have been no mining operations on these claims for a number of years.
2. He wants the land for a homesite.

A Geological Survey report, dated October 11, 1962 shows that the land may be valuable for gold. The Department has held that lands which are valuable for minerals that are locatable under the United States mining laws are not subject to disposal under the public sale law. Buck Willcoxson, A-27402 (December 17, 1956). (43 CFR 250.8)

A Bureau land examination report states that the acreage and position of this tract cannot be determined without a costly survey. It also states that one of the mining claimants has instituted an action in the county court against an adjoining land owner because of a boundary dispute and this will affect the position and acreage of the subject land. Therefore, it is not in the public interest to offer the tract at public sale with the knowledge that the boundaries of the land are ambiguous.

In his statement of reasons for appeal the appellant insists that there "is only one acre of land." However, his public sale application states that there are "1 or 2 acres." Moreover, the land description in the public sale application describes the land as:

> "That portion West of Lot 14 and east of patented mine lot 67 and 89 in Sec. 30."

From this description, it is apparent that location and the acreage of the applied for land cannot be identified with certainty.

In view of the foregoing, the application was properly rejected and the decision is affirmed.

This decision is without prejudice to the applicant's right to purchase other available small tracts of land at public auction or by lease and sale, pursuant to departmental regulations 43 CFR 257.

Russell D. Wilhoit is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Hon. Clair. Engle, U.S. Senate
Russell D. Wilhoit (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

NOV 12 10 00 AM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02812

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 30, 1963

DECISION

Howard E. Bruce : Public Sale Application

Decision Affirmed

Howard E. Bruce has appealed from a decision, of the Riverside Land Office, dated April 22, 1963, rejecting his public sale application for 80 acres of land. The principal reasons stated in the decision for rejecting the application are:

1. The area has been designated for retention by the Government because of its potential for recreation and public purposes, due to its:
    a. proximity to the Santa Margarita River Course.
    b. naturally beautiful character of the land.
2. The Riverside County Park Department has expressed an interest in the land.
3. There is no compelling reason for selling this land at the present time.

The appellant alleges that:

1. The land is too steep for the construction of a passable road and even if it were possible, the cost of such construction would not be practical.
2. Most of the land is covered with huge boulders, both above and below the ground and this would make development of the land "exceedingly costly."
3. The State of California has more than adequate park land to serve the area.
4. The land should be made available for private ownership in order to get it on the tax rolls and provide additional revenue for the local government.

Where public land is determined to be valuable for recreational or other public purposes, it will be retained in public ownership for availability to the general public, rather than be disposed of for private uses. Moreover, public land will not be disposed of at public auction unless such disposal will be in the public interest, or serve a sound public purpose. The appellant has failed to show that the sale of the land to him would be in the public interest or serve a sound public purpose.

Therefore, the decision appealed from is affirmed.

This decision constitutes a final administrative determination by the Department in this matter. See 43 CFR 221.31.

Hoffman

Assistant Director

Approved: October 28, 1963

John A. Carver Jr.

Secretary of the Interior

DISTRIBUTION:
Howard E. Bruce
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

T. OF INTERIOR
MENTO, CAL.

SEP 23 10 00 AM 1963

BUREAU OF
LAND MANAGEMENT

LAND OFFICE

In reply refer to:
6.05c
Sacramento 074634

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 16, 1963

Certified Mail
Return Receipt Requested

DECISION

Newton Yates : Public Sale Application

Decision Affirmed

Newton Yates has appealed from a decision, dated April 9, 1963, rejecting his application for the public sale of 38.63 acres of land for the following reasons:

1. The highest and best use of the land is timber production under Federal ownership. The land is partially covered with immature ponderosa and sugar pine and the soil and climate are well adapted to such production.
2. The land is located in a resource management area and the economy of the area is very dependent upon a continued source of timber.

The appellant alleges that the applied-for land is barren and has produced no timber for 60 years. He also states that the land contains "no timber that any mill would consider".

The appeal indicates that the appellant and the Land Office may be describing different tracts of land.

The classification report states that:

> ". . . The subject land . . . was located with reference to found corner common to sections 27, 28, 33, and 34."

It must therefore be concluded that the Land Office made its determination on the basis of the land description in the appellant's application. The classification report also states that the described land is an integral portion of 5,000 acres of public land presently under sustained yield management and that other federal lands in the area under sustained timber management adjoins this section of land in which the subject land is located.

The case record also contains a report from Geological Survey that the land in this township may be valuable for gold. However, no mineral determination appears to have been made.

An application for the public sale for land classified as chiefly valuable for timber production and retention in public ownership is properly rejected. Garfield Taylor, A-28205 (April 26, 1960).

The appellant has submitted no positive, substantial evidence showing that the sale of the land would be in the public interest or serve a sound public purpose. This he is required to do, in light of the present public land conservation program.

Accordingly, the decision is affirmed.

Newton Yates is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

DISTRIBUTION
Newton Yates (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

OCT 14 10 00 AM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 073683

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 3, 1963

Certified Mail
Return Receipt Requested

DECISION

F. Lester Patterson, Jr.
and Jessie L. Patterson

Public Sale

Decision Affirmed

The above-named persons have appealed from a decision of the Sacramento Land Office, dated April 18, 1963, rejecting their above-identified public sale application for the following reasons:

1. The applied-for land is an integral part of a watershed which is vitally important to the agriculture located in the Bureau's Sierra de Salinas Public Land Management Unit.
2. The lands have substantial potential value for range management and recreation.

The appellants allege that the area is too small to have any range potential and that it has no recreational resources. The appellants requested an extension of time in which to develop detailed information in support of their appeal. This extension of time was granted but they have not submitted any additional information.

The classification report shows that the public land in the Sierra de Salinas water shed is vital to 128,500 acres of class 1 soils from which $100,000,000 worth of fruit and vegetables are harvested annually. Eventually, it will become necessary to improve the water shed to increase the water yield for the conservation of the high value lands which the watershed serves. The record also shows that some of the hill-top land, with an approximate elevation of 1,700 feet, has value as a secondary communication site.

In the absence of substantial, positive evidence showing that the sale of the land would be in the public interest or serve a sound public purpose, the classification of the land will not be disturbed. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957); John Hayward Dill, A-28467 (February 14, 1961). The appellants have made no showing which refutes the validity of the land classification.

Therefore, the decision is affirmed.

F. Lester Patterson, Jr. and Jessie L. Patterson are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Dale E. Zimmerman

Chief, Division of Appeals

Enclosure

DISTRIBUTION
Gilmore and Gilmore (Certified Mail)
F. Lester Patterson, Jr. & Jessie L. Patterson
Hon. Wayne Aspinall
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

OCT 18 2 19 PM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02827

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 9, 1963

Certified Mail
Return Receipt Requested

DECISION

Robert H. McClatchey : Public Sale

Decision Affirmed

Robert H. McClotchey has appealed from a decision of the Riverside Land Office, dated May 15, 1963, rejecting his preference right to purchase certain lands sold at public auction. The preference right was rejected because the date shown on the certificate of titleof adjoining lands was prior to the date of the sale. The Land Office declared Rose Scharf, also a preference bidder, to be the purchaser of the tract.

On appeal the appellant contends, among other things, that (1) his preference was filed May 1, 1963; (2) it could not be anticipated that the document would be defective and (3) information is desired as to what would be acceptable evidence of adjoining ownership.

A review of the record reveals that although the certificate of ownership of adjoining lands was prepared May 1, 1963 it shows the date of ownership to be April 1, 1960. This date is over three years prior to the sale date of April 9, 1963. It therefore does not comply with the regulations for establishing a preference right (43 CFR 250.11(b)(1)(ii)) The certificate of ownership must show that the party owns adjoining land as of the date of the sale or any date within 30 days after the sale date. Paul A. and Blanche E. Cook, A-28328 (July 7, 1960).

Accordingly, the decision rejecting the appellant's preference claim and awarding the land to Rose Scharf was proper.

Therefore, the decision appealed from is affirmed.

Robert H. McClatchey is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

RO

If an appeal is filed the adverse party to be served by him is:

Rose Scharf
3655 Big Dalton Avenue
Baldwin Park, California

Dale E. Zimmerman
Chief, Division of Appeals

Enclosure

DISTRIBUTION
Robert H. McClatchey
Division of Lands and Recreation
Appeals List No. 1
CLH

appeal to Sec

DEPT. OF INTERIOR
SACRAMENTO, CAL.

OCT 24 10 09 AM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02079

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 18, 1963

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DOCKET FILES

DECISION

Wilshire Management Company, Inc. : Public Sale
:
:

Bureau Decisions of March 18, and April 5, 1963 Vacated; Manager's Decision of November 19, 1962 Vacated; Case Remanded.

By Bureau decision of March 18, 1963 a decision of the Manager, Riverside Land Office, dated November 19, 1962, and declaring Alfred A. Gregory to be the purchaser of certain land offered at public sale, was affirmed. The Bureau's March 18 decision was supplemented by a decision, dated April 5, 1963, which informed Wilshire that, in the event an appeal were taken to the Secretary, Wilshire must serve Gregory with a copy of its notice of appeal within 15 days after filing the notice of appeal, or, in the alternative, within 15 days from the receipt of the decision of April 5, 1963, whichever was later. Since Wilshire failed to serve Gregory with a copy of its notice of appeal and statement of reasons within the permitted time, the Department, by its decision A-30010 of September 16, 1963, dismissed Wilshire's appeal.

There was included with Wilshire's appeal to the Secretary a certified letter, dated August 14, 1962, received by Wilshire from the Riverside office which gives indication that Wilshire was being considered as the applicant for the sale as of the time the sale was held as to the 40 acre tract in controversy.

Regulation 43 CFR 250.11(b)(3)(iii) provides, in pertinent portion, that where only one subdivision adjoining two preference right claimants is offered for sale, it will, in the absence of equitable considerations, be awarded to the applicant for the sale if he is a qualified preference-right claimant. Otherwise, it will be awarded to the first qualified person who properly asserts such a right. The Manager's decision of November 19, 1962 determined that Gregory and not Wilshire should be declared purchaser since Gregory was the first qualified person who properly asserted a preference right. The Bureau decision of March 18, originally affirmed on the basis that the sale was strictly by Bureau motion. However, with the new evidence now in the record strongly indicating that Wilshire was the "applicant for the sale", we feel it necessary to return the case to the Riverside office for proper handling in accordance with the above cited regulation.

Accordingly, the Bureau decisions of March 18 and April 5, 1963 and the Manager's decision of November 19, 1962 are hereby vacated and the case remanded to the Bureau's Riverside office for appropriate action.

Alfred A. Gregory is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Should Alfred A. Gregory file an appeal to the Secretary of the Interior, the adverse party to be served is:

Wilshire Management Company, Inc.
Edward E. Keeler, President
2444 Wilshire Blvd., Suite 405
Santa Monica, California

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Alfred A. Gregory (Certified Mail)
Wilshire Management Company, Inc.
Assistant Solicitor, Land Appeals
Division of Lands and Recreation
Appeals List No. 1
BRA

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In Reply Refer To:
6.05c
Sacramento 074917

DEPT. OF INTERIOR
SACRAMENTO, CAL.
OCT 28 10 09 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 22, 1963

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

George M. Downing	:	Public Sale Application
	:	
	:	
	:	Decision Affirmed

George M. Downing has appealed to the Director from a decision of the Sacramento Land Office, dated September 10, 1963, rejecting his public sale application for 80 acres of land for the following reasons:

1. The applied-for land is a part of a block of public land which is in sustained yield timber production and this is its highest and most beneficial public use.

2. The land is desirable for watershed protection.

3. The land is valuable as a wildlife habitat for deer winter range.

4. The land is valuable for public recreation purposes.

The appellant alleges that he needs the land to supplement the limited feed and water supply on his premises. He disputes the value of the land for timber because, "a large portion of the trees have been infested, and . . . no steps have ever been taken to control or correct this infestation."

The classification report shows that:

1. The subject land is part of a contiguous block of 240 acres, and included with 29,269 acres of public forest land in Amador and Calaveras Counties, which is being managed for sustained yield timber production. The timber stand contains 183,960,000 board feet.

2. The applied-for tract includes 10 acres of old-growth sugar pine and ponderosa pine, 50 acres of young timber, and 20 acres of unstocked land capable of growing timber.

3. The land is valuable for watershed protection of the middle fork of the Mokelumne River and Forest Creek which traverse the subject land. This is used by the public for trout fishing.

4. The lands offer excellent public hunting for small game (rabbits and quail) and big game (deer).

An application for the public sale of land classified as chiefly valuable for timber production and retention in public ownership is properly rejected. Garfield Taylor, A-28205 (April 26, 1960).

In view of the foregoing, even if the 80-acre tract was not considered valuable for timber resources, it would still be unavailable for public sale, because the land is valuable for recreational purposes, and in conformity with the departmental conservation program, public land valuable for recreation purposes will be made available to the general public, rather than be disposed of for private uses. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959).

Accordingly, the decision is affirmed.

George M. Downing is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
George M. Downing (Certified Mail)
Hon. Charles S. Gubser, House of Representatives
Division of Lands and Recreation
Appeals List No. 1
MHS

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DEPT. OF INTERIOR
SACRAMENTO, CAL.

NOV 21 10 00 AM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 076439

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

November 15, 1963

Certified Mail
Return Receipt Requested

DECISION

Alonzo E. Wood : Public Sale Application

Decision Affirmed

Alonzo E. Wood has appealed from a decision of the Land Office at Sacramento, California, dated August 23, 1963, rejecting his above-identified public sale application for the SE¼NE¼ sec. 31, T. 24 S., R. 8 E., M.D.M. The rejection was for the reason that the land was withdrawn from all forms of disposition under the public land laws and reserved for the use of the Department of Defense as a training site center, pursuant to the provisions of Executive Order No. 8830 of July 24, 1941, and Executive Order No. 9526 of February 28, 1945.

The appellant does not dispute the withdrawn status of the land but presents various arguments as to why his application should be allowed. He asserts, in substance, that the 40-acre tract is rocky, brush covered, has no access, is less than desirable as a military facility and is surrounded by private property, 160 acres of which are owned jointly by himself and his family; the sole manner in which the tract could be efficaciously used by the military would be by the acquisition of all private, intervening plots of ground in the area which lie between the Military Reservation (Hunter Liggett) and the subject tract; the land is more valuable for their cattle business than for a military training center; and the best interest of all parties concerned would be served by the sale of the land, putting it on the tax rolls and into foreseeable productive use.

The appellant's arguments are contrary to the evidence contained in the record. The record shows that all land surrounding subject tract was withdrawn by the same executive order which withdrew the applied-for land. Bureau records disclose that the executive order has not been revoked, thus the land involved remains in a withdrawn status.

The Secretary of the Interior is without authority to dispose of land at public sale which is withdrawn from all forms of appropriation by an executive order. 43 CFR 295.1(a). An application for the public sale of land withdrawn for the use of an agency of the Department of Defense must be rejected; action on the application will not be suspended to await the possible revocation of the withdrawal order. Frank J. Schultz, A-28575 (February 7, 1961).

Accordingly, the decision appealed from is affirmed.

Alonzo E. Wood is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Alonzo E. Wood (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
RLE

appeal to Sec
affirmed as modified
A-30211 (ltr)
5-19-64

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DEPT. OF INTERIOR
SACRAMENTO, CAL.
NOV 22 10 00 AM 1963
BUREAU OF LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 056601

November 18, 1963

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

Certified Mail
Return Receipt Requested

DECISION

Gerald H. Lange	:	Public Sale Application

Decision Affirmed

Gerald H. Lange has appealed from a decision of the Land Office at Sacramento, California, dated September 5, 1963, rejecting his above-identified public sale application for Lot 31 sec. 21, T. 45 N., R. 7 W., M.D.M. The rejection was for the reason that the land had been examined by a qualified officer of the Bureau of Land Management and classified as not proper for public sale because: (1) the land is more suitable for use or disposition for small tract purposes, (2) mining claims cover a portion of the land and no public interest would be served by determining the validity of these claims at the present time, and (3) disposition of the land should be made in such a manner as to benefit the inherent qualities of the area for rural-residential development.

The appellant asserts, in substance, that the land is not suitable for small tract purposes, but only for grazing purposes. The tract is located on a barren hillside and part of the land consists of a drain from run-off water from the adjacent mountainous area. The land is too far from the city limits of the City of Yreka to be served by city water and there is no water available in the area for use of homes. He contends that subject lot serves a vital purpose in forming an access from his adjoining private property to his mountain grazing area, is of little value to anyone except himself and that his application should be allowed.

The field report of the examination of the land, contained in the record, substantiates the findings in the decision. The report further shows that grazing values of the land involved are insignificant. The land lies at an elevation of some 2,000 feet, is gently rolling, and well suited for subdividing into small tracts with a good view of the valley to the southeast. The city limits of Yreka, California, are in the immediate area, include portions of section 21, and utilities and water are available. Access to subject land is excellent. The allowance of the public sale application would complicate access to the remaining public land and also complicate the problem of determining the highest and best use of parcels of public land adjoining the land under application.

The public sale law, as amended (43 U.S.C., 1958 ed., sec. 1171), authorizes the Secretary of the Interior to sell public land, if, in his judgment, it would be proper to dispose of the land at public auction; and the filing of an application for the sale of public land does not vest in the applicant any right or privilege which precludes the Secretary, or his delegate, from rejecting the application in the exercise of the discretionary authority granted by the public sale law. Monolith Portland Cement Company, A-28728 (July 11, 1962). Moreover, the appellant's general assertions, unsupported by any positive or substantial evidence, are insufficient to warrant any change in the classification of the land. Cornelius B. Wedel, A-28932 (September 25, 1962).

It appears from the record that the highest and best use of the land involved is for small tract purposes. Accordingly, the decision is affirmed.

Gerald H. Lange is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Sppeals
Division of Appeals

Enclosure

DISTRIBUTION

Ross L. Bigler, Attorney for appellant (Certified Mail)
Gerald H. Lange
Division of Lands and Recreation
Appeals List No. 1
RLE

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DEPT. OF INTERIOR
SACRAMENTO, CAL.
DEC 6 2 29 PM 1963
BUREAU OF LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 058252
December 3, 1963

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

James E. Slyh : Public Sale Application
:
:

Decision Affirmed

James E. Slyh has appealed from a decision of the Sacramento Land Office, dated September 6, 1963, rejecting his above-identified application because the land applied for is embraced in a California State Division of Highways material site required as a source of materials for highway construction or maintenance and, therefore, the land is not suitable for ordering into market at public sale. The decision appealed from states that the land required for material site purposes cannot be properly classified for public sale since removal of the surface soil in the operation of the State's highway program would conflict directly with any surface use of the land contemplated by the public sale applicant, as well as jeopardize the maintenance of any improvements placed on the land in connection with the surface use.

The appellant does not dispute the fact that the land is included in a material site, but he questions whether it was proper to include the land in such a material site since, he alleges, it is not adjacent to the road which it is to serve.

The appellant's presentation on appeal has been found to be insufficient to show that the refusal to designate the land described in his application as suitable for disposition under the public sale law is in error.

While the land sought by the appellant is subject to public sale, 1/ the public sale law being a permissive statute, the determination as to whether or not lands applied for thereunder shall be disposed of at public sale is within the discretionary authority vested in the Secretary of the Interior or his duly authorized delegate. Monolith Portland Cement Company, A-28728 (July 11, 1962).

Bureau records confirm the status of the applied for land as included in a right-of-way to the California State Division of Highways for a material site approved August 10, 1959, 2/ and that the land has not reverted to the control of the Department of the Interior pursuant to 23 U.S.C. 317 (43 CFR 244.54(b)(3)). The District Right of Way

---

1/ See Vernon F. Ravenscroft, Idaho 08359 (December 29, 1959).

2/ The date of approval of the right-of-way was given erroneously in the decision appealed from as August 11, 1959.

Agent for the California State Division of Highways indicated in a communication to this Bureau, dated August 13, 1963, that it is desired that the land in question continue as a materials source in connection with the reconstruction of U.S. Highway No. 99 to freeway standards.

The word "adjacent" as used in the statute, and the applicable regulation 43 CFR 244.54(b), can be interpreted as denoting proximity in degree. An administrative finding that the land is adjacent, within the meaning of the statute, to the highway for which the material is to be used is implicit in the issuance of the right-of-way for the material site. It has been held that where a highway being built under the Federal Highway Act (23 U.S.C. 18) 3/ is approximately two miles distant from public land on which a material site permit was issued, a determination that the land is "adjacent" to the road within the meaning of the Act is not unreasonable. Cf. Sam D. Rawson, 61 I.D. 255 (1953).

In the circumstances of the instant application, the refusal to offer the applied for land at public sale was proper, and the decision appealed from is affirmed.

James E. Slyh is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is taken, the adverse party to be served will be:

State of California
Department of Public Works
Division of Highways
Public Works Building
Sacramento, California

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

3/ Now the 1958 Federal Aid Highway Act (23 U.S.C. 317).

9

DISTRIBUTION:
Mr. Donald A. Thomas, Attorney for Appellant (Certified Mail)
Mr. James E. Slyh
State of California, Division of Highways
Division of Lands and Recreation
Appeals List No. 1
MAG

DOCKET FILES

In reply refer to:
6.05c
Riverside 02724

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

December 23, 1963

Certified Mail
Return Receipt Requested

DECISION

Joseph L. Chiriaco : Public Sale Application

Decision Affirmed

Joseph L. Chiriaco has appealed from a decision of the Land Office at Riverside, California, dated October 8, 1963, rejecting his above-identified public sale application for the W½, S½SE¼ sec. 10 T. 6 S., R. 12 E., S.B.M. The rejection was for the reason that it would not be in the public interest to classify the land for disposition at the present time because: (1) the land lies along both sides of U. S. Highway 60-70 which has been selected for development into a major interstate and National Defense Highway, with selected locations for interchanges and limited access to the freeway, by the United States Bureau of Public Roads in coordination with the State of California and the state has requested that the land remain in Federal ownership pending completion of the freeway; (2) if the land were sold at the present time, the State of California would be required to institute condemnation proceedings to acquire the land ⁄ needed ⁄ and to pay the private owner the market value in addition to any severance damages to the remainder of the land, thus resulting in increased burdens on the taxpayers; (3) prices of land in the vicinity of freeway interchanges tend to soar when sought for development as sites for motels, service stations, et cetera, and any such appreciation of the value of subject land should accrue to the public; nor would it be proper to dispose of the land pending completion of the new highway and a realistic evaluation made of the land use situation surrounding the area; and (4) there are sufficient private lands available in the immediate area to meet the present needs for private development and there is no compelling reason to dispose of subject land.

The appellant asserts, in substance, that he purchased 40 acres of land adjacent to subject land in 1930 for $300 per acre, sold 33 or 34 acres of the land to the Government during the war for $5.00 per acre to assist in prosecuting the war, developed the remaining 6 or 7 acres until it is now worth between $200,000 and $250,000 and that ever since 1940 he has made numerous unsuccessful efforts, as shown by attached exhibits, to acquire additional public land adjacent to his property in order to expand his business. In view thereof, he contends that he, rather than the general public, should be given the benefit of the increased value of subject land and that he should have the first opportunity to acquire the land he deeded to the government and adjacent property for the purpose of expanding his business operations. He is willing to agree with the Bureau of Land Management and/or the Highway Department of the State of California that if his application is allowed, he will convey to the State of California any portion of the land sought which may be needed for the freeway at the same price for which he is permitted to purchase it and waive any claim for severance damage [to the remaining land]. He asserts that his property has a highway frontage of approximately 450 feet and it is possible that when the freeway is completed, with an interchange near his property, the area of his property will be reduced to 450 feet in length by 300 feet deep. This would cripple his operations in the area and prevent making plans for expansion unless his application is allowed. He feels that by proper consideration and weighing of all factors the allowance of his application would be fair and would not be adverse to the public interest.

The appellant's arguments are not persuasive. The successful development of 6 or 7 acres of land over a period of several years is not a justification for allowing a public sale application for contiguous land. An agreement such as the appellant mentions has no merit because it would nullify the freeway coordination construction program between the State of California and the United States Bureau of Public Roads and seriously affect the public interest. The record shows that the land under application consists of 400 acres, adjoins various tracts of private lands, and that its highest and most beneficial use is for speculative investment. Furthermore, if the appellant's application were allowed, and if he became the successful purchaser, his highway frontage along both sides of the completed freeway would be extended by several thousand feet, to the detriment of the general public.

From a careful review of the record, it is concluded that subject land was properly classified for retention in Federal ownership pending the completion of the proposed freeway and a realistic evaluation made of the land use situation surrounding the area; therefore the application was properly rejected. Bert Leander Sargent et al., A-28809 etc. (January 30, 1963). The appellant has presented no positive, substantial evidence that the adverse classification is in error. Cornelius B. Wedel, A-28932 (September 25, 1962)

Accordingly, the decision appealed from is affirmed.

Joseph L. Chiriaco is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

Distribution:

C. F. Woolpert, Attorney for Appellant (Certified Mail)
Joseph L. Chiriaco (Regular Mail)
Division of Lands and Recreation
Appeals List No. 1
RLE

DOCKET FILES

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
6.05c
Sacramento 075751

January 6, 1964

DEPT. OF INTERIOR
SACRAMENTO, CAL.

JAN 10 10 00 AM 1964

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

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DECISION

Paul J. Van Brocklin	:	Public Sale Application
Loren H. Cantrell	:	

Decision Affirmed

The above named applicants have appealed from a decision of the Sacramento Land Office, dated October 30, 1963, rejecting their joint application for the sale of approximately 920 acres of public lands because they have a high potential recreation value and a substantial segment thereof is within a forest management unit.

The appellants allege that they own property on two sides of the desired lands and are attempting to acquire them for the purpose of developing a public recreation area.

The case record contains a classification report which states that the desired lands are in close proximity to the proposed English Ridge Damsite and some of those lands will be inundated by the reservoir, thus creating a shoreline of high recreational potential. The proposed reservoir will contain an estimated storage maximum of 1,490,000 acre feet and cover an area of 4,200 to 10,200 acres. The lands are easily accessible to the Sacramento Valley and Bay area population centers where such recreation facilities are in high demand. The report also states that the segment of lands located in the Pomo Forest Management Unit is suitable for long term timber management. This timber land constitutes approximately one-third of the lands within the management unit. The entire unit has a present estimated stumpage value of $430,000 and a potential annual production of 1,250 M board feet.

It is obviously not in the public interest to dispose of these public lands which have been classified as highly valuable for sustained timber management and public recreation.

The Department has consistently held that an application for the public sale of land classified as chiefly valuable for timber production and retention in public ownership is properly rejected. Garfield Taylor, A-28205 (April 26, 1960). The Department has also consistently held that public lands, valuable for recreation purposes will, in conformity with its conservation program, be made available to the general public, rather than be disposed of for private uses. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959).

Accordingly, the decision is affirmed.

Paul J. Van Brocklin and Loren H. Cantrell are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Paul J. Van Brocklin (Certified Mail)
Loren H. Cantrell (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
MHS

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DEPT. OF INTERIOR
SACRAMENTO, CAL.
JAN 24 2 50 PM 1964
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LAND OFFICE

In reply refer to:
6.05c
Riverside 02860
03016
January 16, 1964
Certified Mail
Return Receipt Requested

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

DECISION

William A. Moncrief :
Elizabeth B. Moncrief : Public Sale Applications
Richard M. Guelich :

Decisions Affirmed

An appeal has been submitted by R. A. Ellsworth on behalf of the above named persons from identical decisions of the Land Office at Riverside, California, dated October 4 and 3, 1963, rejecting their above-identified public sale applications for all of secs. 16, 22 and 26 T. 8 S., R. 8 E., S.B.M. The rejection was based on the finding that the lands had been examined by qualified Bureau of Land Management personnel and classified as unsuitable for disposition at public sale at the present time because: (1) the lands are located in a popular and growing area half way between Salton City and the cities of Indio-Palm Springs, where there has been considerable activity in land sales, transactions during the past few years and the sales data showing value appreciation of lands similar to the subject lands; (2) there is an abundance of superior lands nearby which can readily serve the needs in the distant future for homesites; (3) at nearby Salton City many subdivisional lots have been sold but very few of the lots are being used for homesites and there appears to be a very active speculators' market in the area, since lands are sold and resold, although there is little need of the lands for intensive purposes or use at this time; (4) the market within the area is characterized by stiff competition and an abundance of developed and undeveloped properties for sale and if the subject lands were disposed of at the present time it is expected that they would be sold several times as land values increase; and (5) it is in the public interest to retain subject lands in Federal ownership at the present time for the purpose of reviewing the influencing conditions affecting the lands and to allow their value appreciation to accrue to the public.

The records show that Mr. Ellsworth submitted the joint notice of appeal and statement of reasons as agent for the appellants without any showing that he was qualified to practice before the Department on their behalf as required by the regulations 43 CFR 1.3. Subsequently he submitted letters from the appellants who state they approve the reasons given for the appeal and that they authorize Mr. Ellsworth to act on their behalf as agent and partner. Thus, it is clear that the appellants have ratified the action taken and accepted the appeal as their own. Barbara C. Storey, A-29584 (September 26, 1963) and the case cited therein.

The appellants' appeal, for the most part, relates to discussions with land office personnel concerning the withdrawal of subject lands from an exchange application and filing the present public sale applications and the assurance that if the lands became available for public sale the applications would be approved. The appellants assert, in substance, that (1) it would be in the public interest to dispose of the lands, put them on the tax rolls and make it possible to develop the area, (2) the lands are key properties in forming a solid block of acreage necessary for development of these properties, (3) the rejection of the applications constitutes obstruction to progress, and (4) there will be no appreciation of land values in the area until these checkerboard sections are released to the public. Based upon the foregoing, the appellants request that the land office decisions be reversed and that their applications be allowed.

The appellants make no mention of the active land speculation market in the area or other numerous factors upon which the adverse classification was based. The public sale law, as amended (43 U.S.C., 1958 ed., sec. 1171) authorizes the Secretary of the Interior to sell public land if, in his judgment, it would be proper to dispose of the land at public auction; and, further, the filing of applications for the sale of public lands do not vest in the applicants any right or privilege which would preclude the Secretary, or his delegate, from rejecting the applications in the exercise of the discretionary authority granted by the public sale law. Monolith Portland Cement Company, A-28728 (July 11, 1962). Moreover, if the appellants were assured by the land office personnel, as they claim, that their applications would be allowed if the lands become available for public sale, the reliance upon such assurance confers no rights upon them which are not authorized by law. Robert L. Miller 68 I.D. 81 (1961).

A review of the record indicates that Bureau personnel, in examining the lands, ascertained all relevant and material facts bearing upon the various influencing factors and came to a considered and informed judgment that it would not be proper to dispose of the lands at the present time. It is concluded that the rejection of the applications was consistent with the facts and was entirely proper; therefore, the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $10. In taking an appeal there must be strict compliance with the regulations.

If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
R. A. Ellsworth, Agent for appellants (Certified Mail)
William A. and Elizabeth B. Moncrief
Richard M. Guelich
Division of Lands and Recreation
Appeals List No. 1
RLE

appeal to file

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
JAN 29 10 00 AM 1964
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 03527

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 21, 1964

Certified Mail
Return Receipt Requested

DECISION

Esther C. Drake : Public Sale

Decision Affirmed

Esther C. Drake has appealed from a decision of the land office at Riverside, dated August 30, 1963, rejecting her public sale preference right claim and declaring another preference right claimant, one Ross Daily, the purchaser of land offered at public sale as Parcel No. 10. The decision held that the appellant had not submitted satisfactory proof of fee simple ownership of adjoining land on a date within 30 days after the date of the public sale. 43 CFR 250.11. The decision stated that the sale was held July 23, 1963, and that, on August 21, 1963, the appellant asserted a preference right claim submitting a certificate of ownership showing she was the owner in fee simple of lands adjoining the offered land as of a date which was several years prior to the date of sale.

The appellant alleges that the title company made an error in completing the certificate of ownership but that it would naturally be assumed she still owns the land since there have been no subsequent sales or exchanges involving her land. She asserts that, inasmuch as she has owned adjoining lands for several years prior to preference right claimant Ross Daily, and was not notified of disqualification prior to the decision appealed from, she should have an equal right to purchase the offered land.

The appellant submitted with her appeal a certificate of ownership dated September 19, 1963, showing that she was the owner of lands adjoining the offered land on July 23, 1963, the date of the sale.

In Fred and Mildred M. Bohen et al., 63 I.D. 65 (1956) the Department stated that it is the obligation of the claimants to ascertain what was required of them in order to preserve their preference right and that

> "That obligation is fully set forth in the regulation. It specifically provides that the claim must be supported by proof of ownership of contiguous land at or after the date of sale and that the failure to submit such proof, * * *

> within the 30-day period will cause a claimant to lose his preference right. It is not incumbent on the personnel of the local /land/ offices to advise claimants in detail how to assert their rights * * *."

A certificate of ownership showing a preference right claimant to be the owner in fee simple of adjoining lands as of a date, or dates, prior to the sale is not acceptable. Paul A. and Blanche E. Cook, A-28328 (July 7, 1960).

The evidence submitted by the appellant with her appeal cannot be accepted as proof of ownership of contiguous lands at or during the 30-day period after the sale since such evidence was not submitted until after the 30-day preference right period had expired. In the circumstances, the appellant has lost her preference right claim to purchase the land. Fred and Mildred M. Bohen et al., supra.

The decision appealed from is affirmed.

Esther C. Drake is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is taken, the adverse party to be served is:

Ross Daily
4481 Firestone Boulevard
South Gate, California

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Mrs. Esther C. Drake (Certified Mail)
Mr. Ross Daily
Division of Lands and Recreation
Appeals List No. 1
MAG

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SACRAMENTO, CAL.

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LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 04278

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

February 17, 1964

Certified Mail
Return Receipt Requested

DECISION

Henry J. Baker : Public Sale Petition-Application

Decision Affirmed

Henry J. Baker has appealed from a decision of the Riverside Land Office, dated December 31, 1963, rejecting his petition-application for the public sale of 80 acres of certain described land because: the desired land has been classified as proper for recreation and public purposes and the applicant has not shown that the applied-for lands are more valuable for the purpose sought than the purpose for which they have been classified.

The appellant alleges in his appeal that the land is rough, hilly, and steep; contains no water; has no access; that the property has no roads, is completely land-locked, and part of land joins "my property."

The final paragraph in the Land Office decision states:

> ". . . If an appeal is filed, the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision appealed from is in error."

The case file contains a copy of the classification order showing classification of the subject land as proper for recreational and public purposes. Departmental regulation 43 CFR 254.6(a) states that lands classified for recreation and public purposes will be segregated from all appropriations including locations under the [1872] mining laws as amended.

The mere fact that the subject land may be rough or has no access across private land or may even be without water at the present time is not positive and substantial proof of error in the classification. Wesley Graden MacFarlane, A-27384 (November 16, 1956). The classification order states that the land has been classified for the benefit of the County of Los Angeles because it has present or potential public recreational, camping, park and public use areas.

The applicant has not shown that the public sale of the land would constitute a higher use than its retention for public recreational use, as required by section 7 of the Taylor Grazing Act. In the absence of such showing, the land must be deemed to have been properly segregated from appropriation by the classification (43 CFR 254.6(a), supra. Therefore, the application is properly rejected. John Howard Dill, A-28467 (February 14, 1961).

Accordingly, the decision is affirmed.

Henry J. Baker is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Henry J. Baker (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

DEPT. OF INTERIOR
APR 17 2 02 PM 1964
BUREAU OF
LAND MANAGEMENT

In reply refer to:
6.05c
Sacramento 073660

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

March 13, 1964

DECISION

George W. Yee, M.D. : Public Sale Application

Decision Affirmed

Dr. George W. Yee has appealed from a decision of the land office at Sacramento, California, dated October 31, 1963, rejecting his above-identified public sale application. The application was rejected for the reason that the land has been classified as not proper for disposal under the public sale law because of its value for timber production and recreational uses.

On appeal, the appellant contends, among other things, that because the land is completely surrounded by privately owned lands, access is limited over a dirt road crossing his land consisting of a private logging road; damage to the road during the hunting season is excessive and constitutes a burden; the limited area of 640 acres is not desirable for deer hunting, which is the principal form of hunting in the area, and the Lassen National Forest, just one mile north, offers hunters and campers more elbow room and is more accessible than the subject land; as for the value for timber, it is his intention to develop the land with other lands owned by him in the same area as a commercial tree farm; and, the isolated section of land could better be developed privately.

The Public Sale Law (43 U.S.C., 1958 ed., sec. 1171), authorizes the Secretary of the Interior to offer for sale land which in his judgment or discretion it would be proper to sell. Whether particular land is to be offered for sale or not is a matter committed wholly to his discretion.

A careful review of the record indicates that Bureau personnel, in examining the land, ascertained all material facts bearing on its character and use value, and came to a considered and informed judgment that the land should not be disposed of because of its high value for timber and recreational uses. The appellant has not submitted any substantial or persuasive evidence that the Bureau action was based on error of fact or judgment.

Although it does appear from the record that access by road is across land owned by the appellant, other physical access to the land is possible across other privately owned lands lying adjacent thereto. The logging road, referred to by the appellant, which extends into the subject land, crosses a corner of the land lying to the south owned by the appellant. This logging road was constructed by a logging company for the purpose of removing timber from the subject land as well as from the adjoining privately owned lands. The California Division of Forestry has indicated its desire to keep this road open for fire protection purposes. While the appellant contends that the subject land is not desirable for deer hunting because of its limited area, the record shows that the land affords a considerable opportunity for hunting deer, bear, quail, and gray squirrels. Rock Creek which crosses the land provides a source of fishing, as well as permanent water for campers and picnickers. Letters have been received from a number of interested organizations and individuals, including the California Department of Fish and Game, Butte County Fish and Game Commission, and sportmen's associations, attesting to the value of the subject land for hunting, fishing and other recreational activities, and recommending that the land be retained in public ownership to assure its future public use for such purposes. In addition to the value of the land for hunting and other recreational uses, it appears that about 50 percent of the land is covered by a good residual mixed stand of commercial species of timber, which can best be managed under the Bureau's sustained yield timber management program.

In view of the above facts, it was proper to refuse to classify the land for disposal under the public sale law.

Accordingly, the decision appealed from is hereby affirmed.

This decision constitutes a final administrative determination by the Department in this matter. 43 CFR 221.31.

James F. Doyle
Acting Assistant Director

Approved: April 9, 1964

Assistant Secretary of the Interior

DISTRIBUTION
George W. Yee, M.D.
Hon. Harold T. (Bizz) Johnson
California Department of Fish and Game
Butte County Fish and Game Commission
Chico Rod & Gun Club
Mr. K. A. McDowell, Sec., District No. 1,
  Associated Sportsmen of California
Mr. and Mrs. John Barneson
Mr. and Mrs. Evan E. Barley
Dr. R. Dean Ogden
Mr. Fred R. Goekler
Mr. Melville E. Moller
Dr. John F. Schmidt
Division of Lands and Recreation
Appeals List No. 1
RBO

DOCKET FILES

In reply refer to:
6.05c
Sacramento 072909
April 22, 1964

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

DEPT OF INTERIOR
SACRAMENTO CAL.

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APR 29 10 00 AM 1964

DECISION

Barbara Marshall : Public Sale Application
:
:

BUREAU OF
LAND MANAGEMENT

Decision Affirmed

Barbara Marshall has appealed [1] from a decision of the Sacramento Land Office, dated December 5, 1963, rejecting her public sale application for the stated reason that it would not be proper to classify the applied for lands for disposition at public sale. The decision recited that the lands (Lots 30 and 31, Sec. 17 T. 16 N., R. 9 E., M.D.M.) are part of an area of public land in Nevada County, California, containing 135,071,000 board feet of timber under management for continuous yield timber production by this Bureau; that the lots applied for contain a stand of ponderosa pine; that, in addition, the lands are valuable for public recreation and the area has value for watershed protection as well as winter range for deer.

The appellant reiterates on appeal that it is only a small portion of Lot 31, approximately two and one-half acres, that she is interested in acquiring. She asserts, in substance, that this small acreage has no merchantable timber and is without access except by trespass through her adjoining one and a half-acre private lot; that adverse topography precludes other access. Hence, she states, she has been delayed in building a home on her privately owned land until she can be assured of the disposition of this small "island" of public land. Separate sale of this small acreage would, she believes, eliminate it as a possible source of difficulty in the future. The appellant states, in addition, that she has been assured by the City Manager for Nevada City that they have no interest in acquiring the land for recreational purposes.

The record shows, as indicated by the appellant, that she first applied for the two and one-half acre tract in Lot 31 only, that she amended the application to include all of Lot 31 upon notice that the original description was not acceptable because it contained less than a legal subdivision, and that she amended the application further to also include Lot 30 in order that her application would include an isolated tract. 43 CFR 2243.0-3, 2243.0-7(a)(2), 29 F.R. 4468, March 31, 1964 (formerly 43 CFR 250.1, 250.6(b)). [2]

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[1] The appeal, though filed in behalf of the appellant by one Anne Hall as agent, without any showing of the agent's qualifications to practice before the Department of the Interior, need not be dismissed since the appellant has ratified and accepted the appeal as her own. Barbara C. Storey, A-29584 (September 26, 1963).

[2] The established principle of the Department in the administration of public lands of not dealing with less than the smallest legal subdivision, a quarter-quarter section or surveyed lot, was set forth in the Land Office decision of September 17, 1962, with respect to the appellant's application.

Record information, including the classification statement, adequately supports the finding in the decision from which appeal is taken. The classification was based upon a report of field examination of the land and upon additional data assembled by qualified personnel of this Bureau, Nothing has been presented on appeal which shows error therein or which would warrant a change in the determination not to designate the applied for lands for offering at public sale. It has been held proper to refuse to classify as suitable for disposal, public land that is included in a timber management program and which is also valuable for game and public recreational purposes. Cf. Clarence J. Heidbreder, A-28841 (July 26, 1962). 3/

The public sale law is a permissive statute, authorizing the Secretary of the Interior to offer for sale land which in his judgment or discretion it would be proper to sell. Whether particular land shall be disposed of at public sale is a matter committed wholly to the discretion of the Secretary, or his duly authorized delegate. Monolith Portland Cement Company, A-28728 (July 12, 1962).

The statute does not confer any right in the land upon the owners of contiguous land; it gives them merely a preference right over other applicants, not owning contiguous land, to buy the land if the Secretary determines to sell it at public sale. Albert Meeks and Helen Louise Meeks, A-29366 (January 9, 1964).

The decision appealed from is affirmed.

Barbara Marshall is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR 1840, 29 F.R. 4326, March 31, 1964 (formerly 43 CFR Part 221). See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure
Dist. on page 3

3/ The record also contains a report from the Geological Survey that the applied for lands may be valuable for gold and other minerals locatable under the United States mining laws; therefore, they are not subject to public sales. Rosemon Willis, A-29538 (August 27, 1963).

DISTRIBUTION:
Mrs. Barbara Marshall (Certified Mail)
Miss Anne Hall
Division of Lands and Recreation
Appeals List No. 1
MAG

In reply refer to:
6.05c
Los Angeles 0156005

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

May 11, 1964

DEPT. OF INTERIOR
BUREAU LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 MAY 18 AM 10 00

DECISION

City of Needles, California   Public Sale Application

Appeal Dismissed: Case Returned

The City of Needles has appealed from a decision of the land office, formerly at Los Angeles, now at Riverside, California, dated July 7, 1960, rejecting its above-noted public sale application for the NE¼ sec. 31, T. 9 N., R. 23 E., S.B.M., California. The rejection was for the reason that the land was within a First Form Reclamation Withdrawal which had been revoked by the Bureau of Reclamation, but the land had not been restored to entry under the public land laws.

Subsequent to filing the appeal, the Act of October 5, 1962 (76 Stat. 749) directed the Secretary of the Interior to convey certain public lands in the State of California (including the land involved) to the City of Needles pursuant to the terms and conditions specified in the act; thus, the issue on appeal has become moot.

Accordingly, the appeal is dismissed and the case returned to the Manager at the Riverside Land Office, through the Bureau's State Director for California, for further appropriate action consistent with the act.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

DISTRIBUTION
City of Needles
Division of Lands and Recreation
Appeals List No. 1
RLE

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND

1964 JUN 26 PM 3 01

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 055491
076271

June 1, 1964

DECISION

Robert L. Moore and Jane Welch Moore; : Public Sale Application.
Peter A. Seller : Public Sale Petition-Application.

Application Rejected

The above-named parties have filed an application and a petition-application for public sale of lands near Leggett, California. A careful review of the record reveals that Bureau personnel ascertained all relevant and material facts bearing on the capability, suitability, availability and physical characteristics of these lands for public sale and for other purposes. Consideration has also been given to the potential demand for the lands for public purposes and to the results of the sale of the land with respect to future Federal, State and local interests.

The lands included in the applications comprise two separate blocks of public lands described as follows:

Block 1.

T. 23 N., R. 16 W., MDM, California
sec. 7 Lots 1, 2, 3, 8 to 20 inclusive (Sacramento 076271)
sec. 8 SW¼SW¼, SW¼NW¼
sec. 17 Lots 1, 2, 3, 4, 7, 8, 9 & 10 (Sacramento 055491, 076271)
sec. 18 Lots 1, 2, 3, 7, 8, 9, S½NE¼, SE¼ (Sacramento 076271)

Block 2.

sec. 4 Lot 12 (Sacramento 055491)
sec. 9 E½NW¼

In brief, the record shows that the lands in Block 1 are valuable for long range timber management as part of the Bureau's Red Mountain Forest Management Unit. The Unit contains an estimated 145,000,000 board feet of timber with a potential annual yield of 4,700,000 board feet. This single block contains approximately 10,000,000 board feet of Douglas fir and is capable of a continuous production of 220,000 board feet per year. Further study and development is required to determine and realize the full potential of the timber resources of the lands.

The record also shows that this block of land is valuable for public recreation purposes, especially hunting and fishing, the demand for which is considerable and expected to rise sharply.

The lands in Block 2 are in close proximity to Block 1 and the Red Mountain Forest Management Unit. The Bureau of Land Management is presently acquiring easements for a road which it will construct through the management unit connecting with U.S. Highway 101. Until access is obtained, surrounding isolated parcels of public land, such as this parcel, have high value for exchange for the acquisition of access or consolidation of the management unit. Thus, there exists a potential public demand for this land for the assembly of recreational and public use sites.

The public sale law, as amended (43 U.S.C., 1958 ed., sec. 1171) authorizes the Secretary of the Interior to sell public land, if in his judgment it would be proper to dispose of the lands at public auction. In exercising this discretionary authority, the Secretary may consider and weigh all factors which have a bearing on the suitability of the lands for use or disposal. Nelson A. Gerttula, 64 I.D. 225 (1957). It has also been held that an application for public sale of land classified as chiefly valuable for timber production is properly rejected. Garfield Taylor, A-28205 (April 26, 1960). In conformity with the departmental conservation program, public land valuable for recreation purposes will be made available to the general public rather than be disposed of for private uses. Cf. Roscoe T. Schafer, A-28131 (August 27, 1959). A refusal to classify land as suitable for public sale is proper where there is a finding that it is suitable for disposition for recreational and public use sites. Cf. Keith M. Clark, Robert B. Choate, Jr., et al., A-28901 (September 25, 1962).

Accordingly, in view of the above determination that the lands in the instant cases are valuable for timber production and recreational and public uses, the application and petition-application for public sale must be and are hereby rejected. 1/

This decision constitutes a final administrative determination by the Department in this matter. 43 CFR 1844.1, 1964 Supp. April 1, 1964 (formerly 221.31). See also 43 CFR 2411.2 supra (formerly 43 CFR 296.5, revised June 14, 1963).

James F. Doyle
Chief, Office of Appeals and Hearings

Approved: June 17, 1964

Secretary of the Interior

1/ Under the supervisory authority vested in him, the Director may assume jurisdiction of any matter involving a land case pending in a land office and dispose of it without waiting for a decision by the local land office. Cf. Angela Matthews Boos, A-28712 (September 21, 1962).

DISTRIBUTION:

Robert L. Moore, and Jane Welch Moore
Peter A. Seller
Div. of L&M Stds & Tech (4)
Appeals List No. 1
REC/RBO

Lands
Docket

DOCKET FILES

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1964 JUN 15 AM 10 00

Public Sales: Land Subject to 2241.07

Lands valuable for minerals which are locatable under the mining laws, such as gold, silver, uranium, etc., are not subject to sale under the public sale law, and applications for such lands must be rejected for this reason alone.

Iola E. Heberlie Andrews, Sacramento 060155 (June 2, 1964)

In reply refer to:
704
Sacramento 060155

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 2, 1964

Certified Mail
Return Receipt Requested

DECISION

Iola E. Heberlie Andrews : Public Sale

Decision Affirmed

The above-named party has appealed from a decision of the land office at Sacramento, California, rejecting her above-identified public sale application for the reason that a field examination disclosed it would be improper to order the land into market for disposition at this time because mining claims cover a portion of the lands, and it would not be in the public interest to determine the validity of these claims at this time.

The records show that a number of mining claims have been filed on the lands over the past several years. The most recent location, or amended location, was filed on the land in November 1963. The United States Geological Survey reports the lands may be valuable for gold. The applied for lands are completely isolated by privately owned lands.

The appellant, in her appeal, does not dispute the fact that the lands are embraced in mining claims, but asserts that they are enclosed by her fence line on three sides, and on the fourth side by a steep cliff. Any person trying to do assessment work on the claim must trespass on her property, which causes her a great deal of trouble and expense.

The public sale law (43 U.S.C., 1958 ed., sec. 1171) authorizes the Secretary of the Interior to offer for sale land which, in his judgment or discretion, it would be proper to sell. However, under the pertinent regulation, 43 CFR 2243.0-7(c), 1964 Special Supp. (formerly 250.8), mineral lands may not be sold except under specific authority which exists for the sale of lands valuable for minerals with a reservation to the United States. Minerals that may be reserved to the United States in such cases are oil and gas, coal, and other nonmetalliferous minerals. Lands valuable for such minerals locatable under the mining laws such as gold, silver, uranium, etc., are not subject to sale under the act.

Since the lands in the instant case are indicated to be ostensibly valuable for gold, and there is an existing mining claim on the lands, the lands cannot be sold at the present time, or until such time as it is definitely determined that the mining claims filed on the lands are invalid and the lands are found to be nonmineral in character. It is not in the public interest to make this determination at this time.

Accordingly, the decision appealed from is affirmed.

Iola E. Heberlie Andrews is allowed the right of appeal to the Secretary of the Interior in accordance with the regulation, 43 CFR 1844.2 (formerly 43 CFR 221.32). See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Mrs. Iola E. Heberlie Andrews (Certified Mail)
Division of Lands and Minerals
  Standards and Technology (4)
Division of Lands and Minerals
  Program Management (2)
Appeals List No. 1
RBO

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 AUG 31 AM 10 00

In reply refer to:
704
Sacramento 074023

June 2, 1964

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

DOCKET FILES

DECISION

Dewey Anderson, :
Protestant :

Gilbert R. Azevedo, Rose R. Azevedo, :
Dominic B. Azevedo, Elaine Azevedo, : Public Sale
Donna Azevedo :
Highest Bidder :

Ethel L. Frost, Harry J. Frost, :
Nellie E. Marsters, Joe C. :
Marsters :
Preference Right Bidder :

Protest Dismissed

Dewey Anderson, on October 21, 1963, submitted a protest against the classification and ordering into the market of certain lands described as Lot 1, NE$\frac{1}{4}$NW$\frac{1}{4}$, N$\frac{1}{2}$NE$\frac{1}{4}$ Sec. 33; Lot 2 Sec. 34, T. 26 N., R. 16 E., M.D.M., California, embraced in public sale application Sacramento 074023 filed by Eda Marsters. The land was offered for sale by the Sacramento Land Office on October 31, 1963 under the second proviso of the public sale law, as amended (43 U.S.C. 1958 ed., sec. 1171). Gilbert R. Azevedo was declared the highest bidder pursuant to his oral bid of $2,370 for the land. During the 30-day period allowed from the sale date for filing of preference right bids by contiguous landowners, such a bid was received from Ethel L. Frost, Harry J. Frost, Nellie E. Marsters, and Joe C. Marsters. Evidence of ownership of adjoining lands was filed, during the same period, by Rose R. Azevedo, Dominic B. Azevedo, Elaine Azevedo, Donna Azevedo, and Gilbert R. Azevedo, together with a statement by the last mentioned owner that his bid at the sale was on behalf of the other Azevedo owners.

In substance, the protest is based on the following grounds:

(1) A proper evaluation of all aspects pertinent thereto has not been made by the public authorities responsible for administering the public lands, and the proposed sale is contrary to the public interest and not in keeping with the practices of sound administration of the public lands.

(2) While the prescribed procedure governing sales of public lands has been followed, "that procedure leaves out an important consideration which is in the basic law governing the administration of the public lands and imbedded in numerous committee hearings before the Congress and in its Acts, 'namely', that the area in which these public lands are located, its agricultural practices and needs are of prime importance." The

protestant also alleged that no inquiry was made of the owners and operators of ranches adjacent to the parcels of public land proposed for sale as to the effect of this sale on them; that they learned of the proposal to sell only after the decision was made to sell this land, and although oral protest was made then, they were informed that their only recourse would be to appear and outbid any bidders making an offer on sales day; that this is ex post facto administration; that it is not sound; and that it is not conducive to good understanding between government agencies, its bureaucrats, and the public which is being served.

(3) Had the agency in question operated properly, held public hearings or interviewed the contiguous owners of land and sought to ascertain what is involved in this proposed sale, the following would have been disclosed:

(a) That the land in question is not suited for anything else but a short seasonal grazing.

(b) That it is untillable dry land of semidesert character, inaccessible, steep and rugged terrain.

(c) That the only access to this land for use is through long established private ranch property, which property is fenced and used for beef cattle production. That any use of this public land would require fencing others out, at a cost prohibitive to any owner.

(d) That the land has no immediate or foreseeable use as summer home or dwelling sites.

(e) "That this land is so situated as to be on the spring and fall migration of some of the Dixie Mountain Game Refuge deer as they move to and from State Fish and Game refuge land. That this land is sought in order to provide privately owned exclusive deer hunting privileges, which is decidedly not in the public interest. For this deer herd is presently the subject of a special legislative interim committee investigation to ascertain the reasons for the declining number of male deer, and that unless refuge passageway is provided these deer, such privately owned and 'operated for profit' passages as the sale of this public land would provide will continue their slaughter and rapid decline, . . . which is decidedly not in the public interest."

(f) That any change of the ownership and administration of this land should involve an investigation of its possible use by either the U.S. Forest Service and/or the State of California Fish and Game Commission, or both.

(g) The price of $2,370.00 set on the 197.4 acres of land "does not represent any use value whatsoever, unless it be this proposed use as a channel for a fall deer kill on a ticket or fee basis, something which is abhorrent to any proper conception of game management, a matter that is offered the committee of Congress as a prime consideration in the policies and practices of the Bureau of Land Management and the Department of the Interior."

The record shows that a full and complete study of the land in question, and the probable effects of its sale, was conducted prior to classification action. The protestant's assertion that a proper evaluation by the Bureau of Land Management was not made is not supported by the record. The proposed classification for disposition at public sale was discussed in the office of the District Manager at Susanville, California, on or about July 23, 1963, with three of the four adjoining landowners, including the protestant. The absent contiguous owner was the applicant who had petitioned that the parcel be ordered into the market. The protestant's allegation that no consideration was given to the effect of disposition of the land on the contiguous owners is, therefore, without merit.

The assertions under items (3) (a) through (d) dictate against retention of the land in Federal ownership and are reasons supporting transfer to private ownership.

As to the importance of the land for deer migration (item (3)(e)), this factor was discussed with the State of California Department of Fish and Game, whose representatives stated that transfer of the land would not hamper its use by the deer for migration. As to the deer hunting values of the parcel, the land is isolated on three sides and without access except across private land; hence, for all practical purposes, it can be used only by permission. The land can be entered from the west, but this involves a hard, rough trip on foot for several miles.

The subject land has no timber and is located three-fourths of a mile from the Plumas National Forest boundary at its nearest point. The use of the land for access to the Forest is not possible because of topography and intervening private ownerships between it and existing roads. The land has no value for inclusion in the forest.

The appraised value was computed through use of standard appraisal methods, by competent Bureau of Land Management appraisal personnel.

These subdivisions do not represent key tracts and they are not part of an intensive management area of the public land. Based on an evaluation of all aspects of disposition of the land versus its retention, a determination was made that it would be in the public interest to dispose of the land by public sale.

For the reasons mentioned above, the assertions of the protestant do not affect the validity of the sale and do not provide a basis for canceling the sale of the lands in question, as it appears the lands were properly classified for disposition at public auction.

Accordingly, the protest is dismissed.

The case record is returned to the jurisdiction of the Sacramento Land Office Manager for negotiations leading to award of the lands in accordance with 43 CFR 2243.1-5, Supplement of 1964 (formerly 43 CFR 250.11).

This decision constitutes a final administrative determination by the Department in this matter. 43 CFR 1844.1, Supplement 1964 (formerly 43 CFR 221.31).

Associate Director

Approved: August 20, 1964

Assistant Secretary of the Interior

DISTRIBUTION
Dewey Anderson
Gilbert R. Azevedo
Rose R. Azevedo
Dominic B. Azevedo
Elaine Azevedo
Donna Azevedo
Ethel L. Frost
Harry J. Frost
Nellie E. Marsters
Joe C. Marsters
Division of Lands and Minerals
Appeals List No. 1
MJB:RLE

Docket

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

DOCKET FILES

1964 JUN 15 AM 10 00

Public Sales: Classification 2243.12 (Mineral Land)

Land valuable for gold is not subject to public sale.

Claude C. Carter, Sacramento 072907 (June 5, 1964)

In reply refer to:
704
Sacramento 072907

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 5, 1964

Certified Mail
Return Receipt Requested

DECISION

Claude C. Carter	:	Public Sale Application

Decision Affirmed

Claude C. Carter has appealed from a decision of the Sacramento Land Office, dated March 10, 1964, rejecting his application for the public sale of 36.60 acres for the reason that the lands are mineral in character, valuable for gold, and, therefore, not subject to sale under the public sale law.

The appellant alleges that he has been living on the subject lands for 14 years, and that there has been no mining thereon. Thus, he impliedly infers that the lands are not mineral in character.

The field report states that there are several adits and shafts on the subject lands that are worked on weekends. These lands lie in one of the richest known pocket mining districts from which at least one million dollars in gold has been produced. The subject lands adjoin on three sides patented mining claims. None of this is disputed by the appellant.

The Department has consistently held that mineral lands are not subject to sale under the public sale law. Rosemon Willis, A-29538 (August 27, 1963); Roscoe T. Schafer, A-28141 (August 27, 1959); Buck Willcoxson, A-27402, A-27403 (December 17, 1956); Ruth Cynthia Kress, A-25349 (August 6, 1948). There is nothing in the appeal that warrants a departure from this rule.

Therefore, the decision appealed from was proper and it is affirmed.

Claude C. Carter is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION
Claude C. Carter (Certified Mail)
Division of Lands and Minerals Stds. & Tech.
Division of Lands and Minerals Prog. Mgmt.
Appeals List No. 1
MHS

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 JUN 24 AM 10 00

In reply refer to:
704
Sacramento 072903

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 18, 1964

Certified Mail
Return Receipt Requested

DECISION

Carlo L. Lastreto :
: Public Sale
Allegra Phillips :

Decision Affirmed

The above-named parties have appealed from a decision of the land office at Sacramento, California, dated January 28, 1964, rejecting their above-identified public sale application, for the reason that it has been determined that it would not be proper to dispose of the lands applied for because they are presently being held under the general mining laws as mining claims.

The lands involved comprise small isolated tracts, and described as Lots 2 and 3 sec. 28, and Lot 4 sec. 34, T. 20 N., R. 4 E., M. D. M., California, containing a total of 18.86 acres. Lots 2 and 3 sec. 28 are joined together but are completely surrounded by lands in private ownership. Lot 4, containing only 2.81 acres is completely isolated by privately owned lands. The lands are located about five miles north from Oroville, California, in an area where considerable quartz mining activity has been carried on for a number of years. Several mining claims have been filed in the sections in which the lands are located. A report from the United States Geological Survey indicates that the lands may be valuable for gold.

The appellants in their appeal state that they have abandoned their request for the sale of Lots 2 and 3 sec. 28, but continue their application for Lot 4 sec. 34. The appellants allege that Lot 4 is surrounded by land owned by them, or land which they are in the process of acquiring. They acquired title to their presently owned lands from the estate of their deceased uncle, C. B. Lastreto, including title to a mining claim filed on Lot 4 by him. They claim that there is no interest in any mining claim on Lot 4 adverse to theirs. The appellants assert that normal development of the 230 acres of land owned by them is being hampered by the existence of a potential nuisance from the subject Lot 4.

Although the appellants have stated that they are no longer interested in purchasing all of the lands originally applied for, but only desire to purchase Lot 4, this land may not be considered for classification or disposal as long as a mining claim thereon remains in effect, and the public sale application insofar as it involves this lot must be rejected for this reason.

Accordingly, the decision appealed from is affirmed.

This decision does not prejudice the right of the appellants to file a petition-application along with a waiver or relinquishment to the mining claim involving Lot 4, in order that classification of the land for disposal may be considered.

Carlo L. Lastreto and Allegra Phillips are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Acting Chief, Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Mr. C. L. Lastreto (Certified Mail)
Division of Lands and Minerals
  Standards and Technology (4)
Division of Lands and Minerals
  Program Management (2)
Appeals List No. 1
RBO

DOCKET FILES
DOCKET CLERK

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 JUL 6 AM 11 23

Pulic Sales; applications 2243.1-1

A protest by a public sale applicant is properly dismissed where there is no showing of error in the Bureau's appraisal and the ultimate test of the fair market value of the tracts of land involved will be determined by the public bidding at the sale.

Elaine G. Kerns, Sacramento 075392 etc. (June 26, 1964)

In reply refer to:
704
Sacramento 075392
075393
075394
075710

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

June 26, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Elaine G. Kerns : Public Sale Applications
:
:

Decision Affirmed

Elaine G. Kerns has appealed from a decision of the Sacramento Land Office, dated March 4, 1964, dismissing her protest of the appraised values of certain parcels of land described in the four separate public sale applications identified above.

The appellant alleges that the appraised market values of the lands are too high and in support thereof she has submitted her own appraisal. Mrs. Kern's statement on appeal contains the following:

> "I am confident you will find Mr. James Bremner has made a fair and objective appraisal of the land in question. He has used comparable sale, as has the Land Office appraiser, but confined his sales comparison to land that was very close both in proximity and type to the land being appraised."

The record shows Mrs. Kerns requested a copy of the Bureau's appraisal and that it was sent to her with a covering letter of April 7, 1964.

The protestant has not shown wherein the Bureau's appraisal is erroneous. Nor, has her appraiser shown how his method of appraisal is determined to be more accurate.

In any case, an appraisal is not the ultimate test of fair market value in public sale cases; it is merely the minimum price set by the Bureau for the sale of the land. The best test of value will be what an informed and willing purchaser will pay for the land at the sale. It, therefore, seems that the actual public auction sale of the tracts of land will accurately determine their market values. At this sale, the applicant will be as free to participate in the bidding as other interested persons.

Accordingly, the protest was properly dismissed and the decision is affirmed.

Elaine G. Kerns is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION:
Elaine G. Kerns (Certified Mail)
Division of Lands & Minerals Standards & Technology (4)
Division of Lands & Minerals Program Management
Research & Analysis Staff
Appeals List No. 1
MHS

DOCKET FILES

Public Sales: Generally--Appraised Values 2243

A protest against the appraised value of land classified as proper for sale pursuant to a public sale application must be dismissed when the protestant fails to submit substantial, positive evidence showing the appraisal to be erroneous.

George Marion Grieb, Sacramento 060276 September 18, 1964

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 SEP 30 AM 10 00

In reply refer to:
704
Sacramento 060276

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 18, 1964

Certified Mail
Return Receipt Requested

DECISION

George Marion Grieb : Public Sale Application

Decision Affirmed

George Marion Grieb has appealed from a decision of the Sacramento Land Office, dated August 15, 1963, in which his protest against the appraised price of the land embraced in his above-identified public sale application was dismissed.

On appeal the appellant contends, among other things, that (1) the land is more suitable for grazing than anything else, (2) the government reserves all the oil and mineral rights, (3) although some of the land could be cultivated, it would not be practical to cultivate the small area, (4) there is no access road and the cost of building a road would be prohibitive, and (5) the property used as the basis of the appraisal is not comparable to the land in question.

The Public Sale Law (43 U.S.C., 1958 ed., sec. 1171), as amended, authorizes the Secretary of the Interior to offer for sale land which in his judgment or discretion it would be proper to sell. Whether particular land is to be offered for sale or not is a matter committed wholly to his discretion. However, no public land will be disposed of unless the Government is assured of receiving a full return for the land.

A review of the record discloses that the appraised price of the subject land is $43.75 per acre. This appraisal was based upon the sale of comparable lands in the vicinity, with an appropriate reduction for lack of access. Although, as stated by the appellant, it would be impracticable to cultivate the small parcel suitable for cultivation, it, nevertheless, adds to the value of the tract.

The records also indicate that qualified Bureau personnel, in examining and appraising the land, ascertained all relevant and material facts bearing on its use value and came to a considered and informed judgment as to its fair market value. The appellant has submitted no substantial or persuasive evidence that the appraised value of the land does not represent its current fair market value. The Department has consistently held that an appraisal will not be disturbed where the applicant has not made any showing which establishes by substantial, positive evidence that the appraisal of the land is erroneous. Cf. Daniel Hicken, A-27877 (March 5, 1959).

Accordingly, the decision dismissing the protest against the appraised price of the land is affirmed.

When this decision becomes final the case will be remanded to the Sacramento Land Office, through the office of the Bureau's State Director for California, for further appropriate action looking toward the consummation of the sale of the land. In the event that Mr. Grieb refuses to proceed with the sale by publishing notice thereof, when called upon to do so, and as required by the applicable regulations, the land will be offered for sale upon the motion of the Bureau at the current market value.

George Marion Grieb is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

George Marion Grieb (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RBO

appeal to Sec
affirmed A-30384
2-12-65 (ltr)

DOCKET FILES

Public Sales: Generally (Appraisals) 2243

An appraisal by a Bureau land examiner of public land offered for sale at public auction will not be disturbed in the absence of substantial, positive evidence that the appraisal is erroneous. The ultimate test of the fair market value of the land involved will be determined by the public bidding at the sale.

Jerry H. and Lois C. Brown, Sacramento 072905 (September 28, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 OCT 5 AM 10 00

In reply refer to:
704
Sacramento 072905
September 28, 1964

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Jerry H. Brown :   Public Sale Application
Lois C. Brown :
:

Decision Affirmed

Jerry H. and Lois C. Brown have appealed from that part of a Sacramento Land Office decision, dated June 8, 1964, which notified them that the 32.99 acres of land applied for in their public sale application had been appraised at $18,000.

The appellants assert on appeal that in their opinion the desired land is worth approximately $9,000. In support of their position they have submitted two reports prepared by their own appraisers. One of these reports sets the value of the applied for land at $11,550 and the other sets the value at $10,750.

The Bureau's appraisal is based upon three comparable sales, one in 1962 and two in 1963, ranging in price from $500 to $1,000 per acre. These include a sale of 7.611 acres of land by Jerry and Lois Brown in 1963 for approximately $7,000. The appellants' appraisers used comparable sales from 1960 to 1963, ranging in price from $250 to $600 per acre, but they did not include the sale made by Jerry and Lois Brown in their appraisal reports. There is no explanation for this omission.

Although the appellants' appraisers reach a different opinion as to the value of the land sought than the Bureau's appraisers, the appellants have not shown wherein the Bureau's appraisal is erroneous. Nor, have the appellants shown how their method of appraisal is determined to be more accurate.

In any event, the appraisals are not the ultimate test of the fair market value of the land in public sale cases; it is merely the minimum price set by the Bureau for the sale of the land. The best test of value will be what an informed and willing purchaser will pay for the tract at the sale. Thus, the actual public auction sale of the land will determine its current fair market value. At this sale, the appellants will be free to participate in the bidding along with any other interested persons.

Accordingly, the decision is affirmed.

Jerry H. and Lois C. Brown are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION:
Emmett J. Foley, Attorney at Law (Certified Mail)
Jerry H. and Lois C. Brown
Div. of L&M, S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MHS

DOCKET FILES

Public Sales: Applications 2243.1-1

Applications for the public sale of lands are properly rejected where their highest and best use is for recreational purposes.

Tejon Ranch Company, Riverside 03300 etc. (September 30, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 OCT 12 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Riverside 03300 thru
03303

September 30, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Tejon Ranch Company	:	Public Sale Application

Decision Affirmed

The Tejon Ranch Company has appealed from a decision of the Riverside District and Land Office, dated June 29, 1964, rejecting its applications for the public sale of four isolated tracts of land totaling 640 acres. The stated reason for rejection of the application was that the lands involved are traversed by El Paso Creek, a live stream, and therefore, the highest and best use of these lands would be for exchange and for recreational and public purposes.

The appellant alleges that only two of the tracts are traversed by the Creek and that the other two tracts have no water on them. The appellant also alleges that all four tracts are separated from each other by land belonging to the Tejon Ranch Company and that there is no right of access across its land to any of the tracts applied for. The appellant has, in addition, indicated a willingness to offer privately owned lands in exchange for the public lands sought.

The mere fact that the desired tracts have no access across private land is not positive and substantial proof of error in the classification. Wesley Graden MacFarlane, A-27384 (November 16, 1956).

The Department's public land conservation policy, announced on February 14, 1961, states, in pertinent part, that:

> "x x x sales x x x of public lands will not be made unless the x x x disposition will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and improving the administration of the public lands. x x x"

The appellant has not shown that the sale of the desired land conforms with the present land conservation program. This it is required to do. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957).

Moreover, the Department has consistently held that applications for the public sale of lands are properly rejected where such lands are deemed to be valuable for recreational purposes. Paul H. Orgish and Freda Eliga Orgish, A-28560 (February 12, 1962).

However, since the decision appealed from indicates that the subject lands are also suitable for an exchange and the appellant has manifested a willingness to negotiate an exchange, this decision is without prejudice to the filing of a private exchange application for consideration by the Bureau's State Director for California.

Accordingly, the decision appealed from is affirmed.

The Tejon Ranch Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed From WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $20. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals and Hearings

Enclosures

DISTRIBUTION:

Tejon Ranch Company (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M FM (2)
Appeals List No. 1
MHS

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1964 NOV 30 AM 10 00

In reply refer to:
722c 2411
Sacramento 074178
077027

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 22, 1964

DECISION

Robert O. Valentine : Public Sale Applicant
:
State of California : Recreation & Public
Department of Parks and : Purposes Petition-Application
Recreation :

Lands Classified as Suitable for Recreation
and Public Purposes
Application for Public Sale Rejected

DOCKET FILES

On January 2, 1963, Robert O. Valentine filed an application for public sale, Sacramento 074178.

The Department of Parks and Recreation, State of California, on November 15, 1963, filed petition-application Sacramento 077027.

A proposed decision was issued on January 17, 1964, by the District Manager of the Ukiah District classifying the lands as suitable for title transfer under the Recreation and Public Purposes Act.

No protests to the classification action were received.

A careful review of the record reveals that Bureau personnel have applied the criteria contained in the regulations by ascertaining all relevant and material facts bearing on the capability, suitability and physical characteristics of the land.

The record shows that the land consists of 5.69 acres located within an intensive use zone of 1,600 acres in the Mt. Saint Helena State Park project of the State of California. This land would complement the State's program on adjoining lands which will provide for 2,500 visitors daily at the inception of the development and ultimately for 6,500 visitors with over-night and day-use facilities. This is adequate evidence that the highest and best use of the land would be for public recreational purposes in conjunction with the proposed State Park.

Accordingly, the land descri'ed as:
T. 9 N., R. 7 W., Mount Diablo Meridia, California
Section 6, Lot 1.
containing 5.69 acres
is hereby classified as proper for disposition for public recreational purposes under the Recreation and Public Purposes Act of June 14, 1926,

as amended (43 U.S.C. 869; 869:1-4; 43 CFR 2232). This classification segregates the land from all other forms of appropriation under the public land laws. The application for public sale is rejected. This decision constitutes a final administrative determination of the Department in this matter. 43 CFR 1844.1, 2411.2.

L. T. Hoffman
Assistant Director

Approved: November 16, 1964

Assistant Secretary of the Interior

DISTRIBUTION:
Mr. Robert O. Valentine
State of California, Department of Parks & Recreation
SD (California)
LO (Sacramento)
DM (Ukiah)
Case Files
DDRF 1 & 2
L&M STDS & TECH (5)
Asst. Secretary Carver (2)
Asst. Sol. Land Appeals
Office of Appeals & Hearings (15)
LM

DOCKET FILES

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1965 MAR 25 PM 2 28

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
722c
Sacramento 055635
076833

October 22, 1964

DECISION

Ida Mae Bennett	:	Public Sale Application
Frank V. deBellis	:	Public Sale Petition-Application

Public Sale Application Rejected, Public Sale Petition-Application Denied, Protest Dismissed.

Public Sale Application, Sacramento 055635 was filed by Ida Mae Bennett on March 31, 1958, and amended on June 6, 1960. Public Sale Petition Application, Sacramento 076833 was filed by Frank V. deBellis on October 8, 1963. The two filing are in conflict with each other on portions of the lands applied for.

A proposed decision was issued on November 26, 1963, by the District Manager of the Ukiah District which denied the petition to classify the lands for disposal at public sale.

Protests to the proposed classification were subsequently received from the public sale petition applicant. The protestant did not submit documentary or other supporting evidence that the proposed decision erred in the facts used to determine that the land would not be properly classified for disposal under the public sale law.

Classification of the following described lands for disposal at public sale is not proper:

T. 12 N., R. 9 W., M.D.M.
Section 2, Lots 1, 2, 3, 4, $\text{NE}\frac{1}{4}\text{NW}\frac{1}{4}$

T. 13 N., R. 9 W., M.D.M.
Section 34, $\text{SE}\frac{1}{4}\text{NE}\frac{1}{4}$, $\text{E}\frac{1}{2}\text{SE}\frac{1}{4}$
Section 35, $\text{SW}\frac{1}{4}\text{NW}\frac{1}{4}$, $\text{SW}\frac{1}{4}$

Reasons:

(a) The land is needed for recreation development and is presently receiving recreational use.

(b) The lands are required for the construction of a management road by the Bureau of Land Management which will provide access to approximately 3,000 acres of public lands for more efficient management.

(c) The West Lake Soil Conservation District plans to construct a dam across Kelsey Creek. The Chairman of the West Lake Soil Conservation District and the Chairman of the Lake County Flood Control and Water Conservation District have requested that all lands in the Kelsey Creek Watershed be withheld from sale.

The petition-applicant has expressed the need for "accessibility" to his private land. Other means exist whereby this need can be satisfied without purchasing the subject land. Neither the public sale applicant or the public sale petition-applicant has shown a special need for the land that cannot be satisfied by other means. The application must therefore, be rejected and the petition-application denied.

This decision constitutes the final administrative determination by the Department in this matter. 43 CFR 1844.1 and 43 CFR 2411.2.

L. Hoffman
Assistant Director

Approved: March 11, 1965

Under Secretary of the Interior

DISTRIBUTION:

Sacramento 076833
  Mr. Frank V. deBellis
Sacramento 055635
  Mrs. Ida Mae Bennett
West Lake Soil Conservation District
SD (California)
LO (Sacramento)
Case Files
DDRF 1 & 2
LM

Office of Appeals and Hearings (15)
Assistant Solicitor, Land Appeals
Assistant Secretary, LM (2)
Div. of L&M S&T (5)
Docket & Records Sec., Sol's. Office(2)
Staff Asst. to Asst. Secy, LM

DOCKET FILES

appeal to Sec

affirmed A-30403 (ltr)
9-15-65

Public Sales: Classification 2243.1-2

Public lands deemed to be valuable for recreation purposes are properly classified as not subject to disposal at public sale; such lands will be made available to the general public rather than be disposed of for private uses.

Josiah N. Knowles, Jessie K. Connell, Sacramento 074226 (November 9, 1964)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 074226

November 9, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Josiah N. Knowles Jessie K. Connell	: : :	Public Sale Application

Decision Affirmed

The above-named individuals have appealed from a decision of the Sacramento Land Office, dated December 3, 1963, rejecting their application for the public sale of 618.44 acres of land. The application was rejected because the lands sought, together with other public lands in the area, are required for management for recreation and other purposes beneficial to the general public. The land office decision expressly provided that the rejection of the public sale application was without prejudice to the filing by the appellants of a right-of-way application for the use of a portion of the applied-for land for the construction of a dam and for a reservoir site in their land development program. [1]

The appellants on appeal state that they seek to purchase 480 acres located on the western side of Lake Berryessa, consisting of three parcels of land which are either completely surrounded or are bordered on three sides by land owned by them in fee. Their plan is to develop the lands sought and their 835 acres of fee lands for recreational and retirement residential purposes.

The case record indicates that the Bureau will consider, under the right-of-way regulations, an application for the land they need for water reservoir storage space.

The appellants contend that a right-of-way will not meet their needs because "applicable California statutes and regulations require a fee ownership of land being subdivided by a developer. A right-of-way for the purpose of flooding a portion of the Federally-owned land by waters impounded in the proposed lake for the limited non-residential and non-domestic purposes permitted under the Federal statutes would therefore be insufficient."

---

[1] Some of the objections to the public sale raised in the Land Office decision have since been resolved and, therefore, they need not be discussed at this time.

The Bureau's land reports state that the lands sought to be purchased are valuable for public recreation purposes: hunting, and possibly picnicing and riding; that such lands are needed by the Government as a part of the access route to the "Cedar Roughs" area which contains a 5,000 acre block of public lands; that "Cedar Roughs" is close to and west and south of the lands sought to be purchased and is valuable for wildlife, hunting and grazing.

The Department's public land conservation policy, announced on February 14, 1961, states, in pertinent part, that:

> "x x x sales x x x of public lands will not be made unless the x x x disposition will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and improving the administration of the public lands. x x x"

The appellants have not shown that the sale of the desired land conforms with the present land conservation program. This they are required to do. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957).

Moreover, the Department has held that an application for the public sale of land is properly rejected where the land is valuable for public recreational purposes. Paul H. Orgish and Freda Eliga Orgish, A-28560 (February 12, 1962).

Accordingly, the Land Office decision was proper and it is affirmed.

Josiah N. Knowles and Jessie K. Connell are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle

Chief, Office of Appeals and Hearings

Enclosures

DISTRIBUTION:

Bronson, Bronson & McKinnon, Attorneys at Law (Certified Mail)
J. N. Knowles and Jessie K. Connell
Hon. Thomas H. Kuchel, United States Senate
Hon. Pierre Salinger, United States Senate
Hon. Don H. Clausen, House of Representatives
Hon. Robert L. Leggett, House of Representatives
Div. of L&M S&T (4)
Div. of L&M FM (2)
Appeals List No. 1
MHS

Public Sales: Bidding 2243.1-4

DOCKET FILES

Persons declared by the authorized officer to be the high bidders for lands offered at public sale are properly bound by their bid and the regulations to complete purchase of the lands where the showing made is found insufficient to warrant their release therefrom.

George A. Darrow, John Davidian, Riverside 05238 (December 2, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 DEC 11 AM 10 00

In reply refer to:
704
Riverside 05238

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

December 2, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

George A. Darrow :
: Public Sale
John Davidian :

Decision Affirmed

George A. Darrow and John Davidian have appealed from a decision of the District and Land Office at Riverside, California, dated September 14, 1964, dismissing their protest against a prior decision which declared them to be the purchasers of certain lands offered for sale at public auction. 1/ The stated reasons for the dismissal were that the allegations of the protest were considered to be without merit or relevance; that the lands in question were sold subject to provisions for any existing rights-of-way in any patents which might be issued for the lands; that such information was published in the notice of sale; and that information as to the nature and extent of rights-of-way involved was also available for public inspection. The decision held, in effect, that an acceptable bid was made by the appellants and sale of the lands pursuant thereto should be made.

The appellants do not point out on appeal wherein the decision appealed from is in error. Their assertions on appeal are mainly self-serving statements and are, in essence, the same as those previously set forth in their protest. They wish to have voided their present status of declared purchasers of the lands designated Parcel No. 1 in the public sale and to have their purchase moneys returned to them. Their several stated reasons for this include allegations that information received from the California Division of Highways was not accurate with respect to the extent of an existing State right-of-way; that in addition to the $27\frac{1}{2}$ acres of land for which they have been declared purchasers they need also, in order to suffice their needs, the $2\frac{1}{2}$-acre tract which was sold as Parcel No. 2 at the public sale. In substance, the appellants present an appeal containing nothing which was not previously of record and considered in the decision appealed from.

The appellants acknowledge they were notified by Land Office decision dated July 17, 1964, that Helen E. Marsteiner, the preference right claimant, was declared purchaser of Parcel No. 2, subject to her compliance with certain requirements, and that thereafter a cash certificate

---

1/ The sale was held June 9, 1964, on the Bureau's own motion.

authorizing a patent to her would be issued. The July 17 decision declaring Mrs. Marsteiner purchaser of Parcel No. 2 allowed George A. Darrow and John Davidian the right of appeal therefrom. Since no appeal from the July 17 decision was taken within the time allowed, the decision became final and a patent was issued to Mrs. Marsteiner under No. 1236791, dated September 17, 1964.

Where, as in the instant case, a purchaser is declared for a parcel of the lands offered at public sale, subject to the right of appeal and the adverse parties named do not exercise their right of appeal, such parties have no standing to complain thereafter. Cf. Duncan Miller, A-28267 (June 8, 1960). Once title is divested from the Government by issuance of a patent, this Department has no longer any jurisdiction over the patented land, and no authority to cancel the patent. Cf. The Dredge Corporation, A-29997 (June 15, 1964).

The applicable regulations (43 CFR 2243.1-4) provide that persons who are declared to be the high bidders for lands offered at public sale shall be bound by their bid and such regulations to complete purchase of the land unless released by the authorized officer. When a public sale has been held after notice thereof by publication and posting, and purchasers have been declared, as in the instant case, such sale will not be vacated where the assertions of the purchasers-protestants do not affect the validity of the sale or provide a basis for vacating the sale.

In the circumstances, the dismissal of the appellants' protest was proper, and their showing on appeal is found insufficient to warrant setting aside the sale or releasing them from their bid on the lands included in Parcel No. 1.

Accordingly, the decision appealed from is affirmed.

George A. Darrow and John Davidian are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
George A. Darrow (Certified Mail)
John Davidian (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MAG

DOCKET FILES

Public Sales: Generally 2243

Where subsequent to the filing of an appeal in connection with an application for the public sale of land, additional information is assembled which warrants reconsideration of the application, the case will be remanded for further consideration.

John H. Wallace, Sacramento 075911 (January 5, 1965)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 JAN 13 AM 10 00

In reply refer to:
704
Sacramento 075911

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 JAN 13 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

January 5, 1965

DECISION

John H. Wallace : Public Sale Application
:
Case Remanded

John H. Wallace has appealed from a decision of the Land Office at Sacramento, California, dated January 7, 1964, rejecting his public sale application, above identified. The stated reason for the rejection was that it would not be proper to classify the applied for land for disposition at public sale because of its primary value for public recreation development.

Subsequent to the appeal the Bureau's State Director for California has advised that additional information assembled by Bureau personnel with respect to the area wherein the land sought is located, warrants reconsideration of this case and requests that the case record be returned.

Accordingly, the case is remanded for further consideration.

James F. Doyle
Chief, Office of Appeals
and Hearings

DISTRIBUTION:
Mr. John H. Wallace
Hon. Harold T. (Bizz) Johnson, House of Representatives
SD (California) w/case file Sacramento 075911
LO (Sacramento)
Case File
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MAG

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1965 FEB 8 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 078535

January 29, 1965

Memorandum

To: Recipients of BLM appeals decisions (Appeals List No. 1)

From: Chief, Office of Appeals and Hearings

Subject: Headnote for decision

The enclosed headnote is to be attached to the Assistant Director's decision of January 13, 1965, approved by the Under Secretary of the Interior on January 18, 1965, concerning the above identified public sale case.

James F. Doyle

cc:
Div. of L&M S&T (4)
Div. of L&M PM (2)
MHS

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 FEB 8 AM 10 00

Sacramento 078535

Benjamin Fireman

13

Approved January 18, 1965

Public Sales: Classification

A public sale is properly canceled where, prior to the issuance of a cash certificate, it is determined that the land involved is needed for an exchange for privately owned land located within the boundaries of the California Point Reyes National Seashore.

DOCKET FILES

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 JAN 28 AM 10 00

In Reply Refer to:
704
Sacramento 078535

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

January 13, 1965

DECISION

Benjamin Fireman : Public Sale
:
:
Decision Affirmed

Benjamin Fireman has appealed from a decision of the Sacramento Land Office, dated September 1, 1964, dismissing his protest to the cancellation on July 10, 1964, of a proposed sale at public auction set for July 16, 1964, of 160 acres of public land in Sonoma County, California. The protest was dismissed for the reason that it has been determined to be in the public interest to make the land in question available for exchange for privately owned land within the Point Reyes National Seashore.

The appellant alleges that:

1. It was error to reclassify the land for private exchange because no exchange application has yet been filed.

2. The sale of the land at public auction, in actual dollars and cents return to the Government, would serve the public interest.

3. The protestant needs the land for access to a tract of his land-locked privately owned land.

The proposed sale was ordered on the motion of the Bureau. The protestant is not an applicant of record. In the exchange the return to the government in lands will not be less than the return in money at public sale. In addition, the Department would be carrying out a directive by the Congress to acquire as much land as possible at Point Reyes by exchange.

A public sale is properly canceled where, at any time prior to the issuance of a cash certificate, it is determined that the land involved is needed for the furtherance of a public purpose. Cf. Mr. and Mrs. Virl E. Winder et al., A-29682 (June 18, 1964). A cash certificate had not been issued in the case under consideration.

Furthermore, considering the purpose for which the land involved is needed, the appellant has not shown that the sale of the subject tract would conform with the Department's public land conservation policy announced on February 20, 1961. Under that policy, sales of public lands will not be made unless the disposition will serve a sound public purpose, including the bona fide needs of the general economy and improving the administration of the public lands. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957).

Accordingly, the decision dismissing the protest is affirmed.

This decision constitutes a final administrative determination of the Department in this matter. (See 43 CFR 1844.1).

L. T. Hoffman

Assistant Director

Approved:

Jan. 18, 1965

John A. Carver Jr.

Under Secretary of the Interior

DISTRIBUTION:

H. S. Gilmore, Agent for Benjamin Fireman

Benjamin Fireman

Div. of L&M S&T (4)

Div. of L&M PM (2)

Appeals List No. 1

MHS

Sacramento 046652 etc.

COUNTY OF SONOMA, JOHN FRANCIS KNOPF ET AL.

Approved August 10, 1965

Public Sales: Recreation and Public Purposes Act: Classification-Protests

Protests against the classification of lands for recreation and public purposes submitted by public sale applicants will be dismissed where it is determined that the highest and best use of the lands is for recreational purposes, and there has been no substantial or positive evidence submitted showing such classification to be in error.

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 AUG 20 AM 10 00

In reply refer to:
722c
Sacramento 046652 et al.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 21, 1965

DECISION

County of Sonoma	:	Recreation and Public Purposes Petition-Application
John Francis Knopf, et al.	:	
	:	Public Sale Applications

Protests Dismissed

Ten public sale applications have been filed for lands in Sonoma and Napa Counties, California. A conflicting petition-application was filed for some of these lands by the County of Sonoma.[1]

On July 10, 1964, the Ukiah District Office issued a proposed decision proposing to classify the lands for lease or sale under the Recreation and Public Purposes Act and rejecting the public sale applications. The proposed decision was served on the petitioner-applicant and the public sale applicants.

Protests to the proposed classification were received from public sale applicants, Dr. Ralph V. Harr (SAC. 075902) and Gertrude R. Jones (SAC. 060843), who favor disposition of the particular tracts they applied for at public sale.

Dr. Harr's protest relates to Unit five and Mrs. Jones' protest relates to Units five and six.

Mrs. Jones states, "The primary ground upon which we base this protest is the fact that the State of California is at this moment in the process of creating an extensive park with a large wilderness area approximately one mile only from the subject lands. . . Much of its terrain is identical in ground cover and other natural characteristics to the land in question, and we can see no reason for the government giving away public lands for a wasteful duplication by one governmental body when another has already more than adequately provided for the area."

Dr. Harr states, "Most of this area is very steep and brushy and not suitable for recreation purposes other than for hikes, and then only for the most hardy type. . . My reason for wishing to acquire the land is that it is part of the watershed and goes naturally with the piece that I own."

---

[1] See appendices for list of applicants and description of the lands.

The record shows that consideration was given to the recreation needs of the area, proposed and existing recreation facilities and the physical characteristics of the area proposed for classification. Development plans for the proposed Sugarloaf Ridge State Park indicate a much more intensive development than is proposed for Mt. Hood County Park. Sugarloaf State Park will include facilities for camping, picnicking, and other forms of recreation for large numbers of people. This park will be open to automobile traffic. At Mt. Hood County Park, the development emphasis is to be placed on trails through natural surroundings, with no automobile traffic in the recreation area. The park will be supplemental to the State park project by furnishing visitors with hiking and riding areas. This is consistent with recreation needs of the area, proposed and existing county and State recreation programs and the physical characteristics of the parcels.

The development plans, as proposed and when accepted, will require the protection of the vegetative cover as well as a minimum of soil disturbance; thus the watershed values will be preserved.

The protestants did not present any evidence that the proposed classification was in error. Therefore, their protests are dismissed.

The lands described in Appendix B are classified as proper for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869).

This decision constitutes a final administrative determination by the Department under 43 CFR 2411.2(d) as to the recreation and public purposes petition application, and under 43 CFR 1844.1 as to the public sale applications.

Charles H. Stoddard

Director

Approved:

Harry R. Anderson

Assistant Secretary of the Interior

Enclosures 2

Appendices A and B

DISTRIBUTION

Each Applicant listed
  on Appendix A
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
LM

Appendix A

Case File Number	Applicant	Land
Sacramento 046652	John Francis Knopf	Unit 8
Sacramento 053291	John McCormick and Edna May Learned	Units 1 and 7
Sacramento 054408	Sam F. and Alberta J. Moore	Unit 8
Sacramento 054505	John H. and Clara Hattie	Unit 4
Sacramento 054515	Ruth A. Leslie	Unit 3
Sacramento 060843	H. McCoy Jones and Gertrude R. Jones	Units 5 and 6
Sacramento 062450	Joseph and Phillus K. Maddux	Units 5 and 6
Sacramento 062876	Billie Jo Rains	Units 8 and 9*
Sacramento 074574	Robert O. Valentine	Units 5 and 6
Sacramento 075902	Ralph V. Harr	Unit 5
Sacramento 077642	County of Sonoma	Units 1, 2, 3, 4, 5, and 6

This decision also involves Unit 10, which is not presently under application.

* This application also includes lands in T. 7 N., R. 5 W., Mount Diablo Meridian which this decision does not concern.

Appendix B

Mount Diablo Meridian

Unit	Legal Description
	T. 7 N., R. 6 W.,
1	Sec. 5, W½ Lot 3, W½ Lot 4;
2	Sec. 5, Lots 7, 8, 9 and 10;
3	Sec. 7, Lot 4;
4	Sec. 7, Lots 5, 6, 7 and 8; Sec. 8, Lot 8;
5	Sec. 8, Lots 11 and 12; Sec. 17, W½NE¼;
6	Sec. 8, Lot 10; Sec. 17, E½NW¼, SW¼NW¼, NW¼SW¼; Sec. 18, Lots 1, 8, 9 and 16;
7	Sec. 9, NE¼SW¼.
	T. 7 N., R. 7 W.,
8	Sec. 1, E½SE¼;
9	Sec. 11, E½NE¼; Sec. 12, SW¼NW¼, NW¼SW¼.
	T. 8 N., R. 6 W.,
10	Sec. 32, SW¼SW¼.

(containing 1409.62 acres)

DOCKET FILES
DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT.
SACRAMENTO LAND OFFICE
1965 SEP 2 PM 2 36

Sacramento 072940
077409
078576

Seventh Day Adventist Church
L. C. Bliss and Sons Livestock Company
County of Del Norte

Approved August 25, 1965

Public Sales: Classification

A public sale application will be rejected when it is determined that the land applied for should be retained in public ownership for public recreation purposes.

Recreation and Public Purposes Act

Public land valuable for public recreational purposes will be made available to the general public, rather than a group that would permit only limited public use.

In reply refer to:
721
Sacramento 072940
077409
078576

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 SEP 2 PM 2 36

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 13, 1965

DECISION

Seventh Day Adventist Church :
: Recreation and Public Purposes
L. C. Bliss and Sons Livestock :
Company :
: Public Sale
County of Del Norte :

Recreation and Public Purposes Application Rejected
Public Sale Petition-Application Denied
Recreation and Public Purposes Petition-Application Denied

The Seventh Day Adventist Church filed Recreation and Public Purposes Application Sacramento 072940 on September 6, 1962, for Lot 2 of NW¼, Sec. 5, T. 17 N., R. 1 W. and fractional W½NE¼, W½SE¼, fractional E½SW¼, Sec. 32, T. 18 N., R. 1 W., H.M., California.

The L. C. Bliss and Sons Livestock Company filed Public Sale Petition-Application Sacramento 077409 on January 13, 1964, for the same lands as the prior applicant, excepting Lot 2 of NW¼, Sec. 5.

The County of Del Norte filed Recreation and Public Purposes Petition-Application Sacramento 078576 on May 21, 1964, describing the same lands as in Sacramento 072940.

An amended proposed decision was issued on January 22, 1965, denying:

(1) The Recreation and Public Purposes Application of the Seventh Day Adventist Church, because allowance of the application would permit only limited public use.

(2) The Public Sale Petition-Application, because the land is chiefly valuable for public recreational use.

(3) The Recreation and Public Purposes Petition-Application filed by the County of Del Norte because an acceptable plan of development was not submitted.

No protest has been filed against the amended proposed decision of January 22, 1965. However, the record shows that the public sale petition-applicant, L. C. Bliss & Sons Livestock Company, did protest a proposed decision of June 23, 1964, classifying the lands as most suitable for public recreation. In that protest the company made no showing of error in the classification of the lands.

The records further show that the subject lands front on the Pacific Ocean for a distance of approximately 1¼ miles. The parcel is about ¼ mile wide and has a gently sloping beach. There is no other public beach in this immediate vicinity.

The lands under consideration are valuable for public recreation purposes because of the shortage of ocean frontage available to the public and the suitability of the lands for public use. Therefore, the application of the Seventh Day Adventist Church is rejected; the public sale petition-application of L. C. Bliss & Sons Livestock Company is denied; and the petition-application filed by the County of Del Norte is also denied. However, the denial of the County's petition-application is without prejudice to its right to file a proper petition-application which conforms with the law and the regulations.

This decision constitutes the final administrative determination of the Department under 43 CFR 1844.1 as to recreation and public purposes application Sacramento 072940, and under 43 CFR 2411.2(d) as to public sale petition-application Sacramento 077409, and recreation and public purposes petition-application Sacramento 078576.

Eugene V. Zumwalt
Acting Director

Approved:
Harry R. Anderson
Assistant
Secretary of the Interior

DISTRIBUTION

Seventh Day Adventist Church
Falk, Dunn and Buxton, Attorneys for
  L. C. Bliss & Sons Livestock Co.
L. C. Bliss and Sons Livestock Company
County of Del Norte
SD (California)
LO (Sacramento)
DM (Ukiah)
Each Case File
DDRF 1 & 2
Div. of L&M S&T (5)
Div. of L&M PM (2)
OPD (1)
Assistant Secretary, LM
Assistant Solicitor, Land Appeals
Staff Assistant to Assistant Secretary, PLM
Docket & Records Section, Solicitor's Office (2)
Office of Appeals and Hearings
JBJ

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1965 SEP 2 PM 2 36

Sacramento 061942
077632

Crofoot Lumber Inc.
James E. Busch and Alfred F. Antoni

Approved **August 30, 1965**

Public Sales: Classification

A public sale application will be rejected and a petition-application will be denied when it is determined that the lands applied for should be retained in public ownership for the purpose of making private exchanges in aid of a federal program, pursuant to the Act of September 13, 1962.

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 SEP 9 PM 2 17

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
721
Sacramento 061942
077632

August 20, 1965

DECISION

Crofoot Lumber Inc.	:	Public Sale Application
James E. Busch and Alfred F. Antoni	:	Public Sale Petition-Application

Application Rejected
Petition-application denied

On March 31, 1960, Crofoot Lumber Inc., filed an application under Rev. Stat. sec. 2455 (1875), as amended, 43 U.S.C. sec. 1171, for the public sale of certain public lands. By an amendment filed March 30, 1964, the application embraces a total of approximately 594 acres in T. 16 N., Rs. 13 and 14 W., and T. 17 N., R. 13 W., M.D.M., California.

On February 5, 1965, James E. Busch and Alfred F. Antoni filed a petition-application for the public sale of 80 acres described in the application of Crofoot Lumber Inc.

A proposed decision was issued on March 11, 1965, denying the public sale application and the petition-application because the lands involved are determined to be most suitable for watershed, wildlife, and hunting purposes with some small areas capable of and suitable for timber production. The lands are also considered valuable for exchange purposes in consolidating the public lands under Federal management and more especially for private exchange in connection with the establishment of the Point Reyes Seashore, California, pursuant to the Act of September 13, 1962 (76 Stat. 538; 16 U.S.C. sec. 459(c)). For these reasons, the subject lands cannot be classified as proper for acquisition under the Public Sale Act.

There are no protests to the proposed decision.

Accordingly, the application for public sale, Sacramento 061942, is rejected, and the petition-application for public sale, Sacramento 077632, is denied.

This decision constitutes a final administrative determination by the Department under 43 CFR 1844.1 as to the public sale application, and under 43 CFR 2411.2(d) as to the petition-application for public sale.

Acting Associate Director

Approved:

Harry R. Anderson

Assistant Secretary of the Interior

DISTRIBUTION:

Crofoot Lumber Inc.
James E. Busch and Alfred F. Antoni
Each Case File
OPD (1)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Assistant Secretary, LM
Staff Assistant to Assistant Secretary
Docket & Records Section, Solicitor's Office (2)
Office of Appeals and Hearings (15)
Appeals List No. 1
JBJ

Sacramento 072917 etc.
Ernest C. and Rachel W. Abbott et al.

Approved October 19, 1965

Public Sales: Classification

Public sale applications will be rejected, and a public sale petition-application will be denied when it is determined that the lands applied for should be retained in public ownership for recreation and other public purposes.

In reply refer to:
721
Sacramento 072917
074600
075349
076598

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 11, 1965

DECISION

Ernest C. and Rachel W. Abbott :
Joe J. Montez :
John Dennis Ahearn :

Public Sale Applications
and Petition-application

Applications Rejected
Petition-Application Denied

The above-named persons have filed applications to purchase certain public lands pursuant to section 2455 of the Revised Statutes, as amended (43 U.S.C., 1958 ed., § 1171). The application, Sacramento 076598, submitted by John Dennis Ahearn on September 4, 1963, was filed as a petition-application as required by the regulations in 43 CFR 250 and 296, as amended on June 14, 1963 (now 43 CFR 2243 and 2411, respectively). The remaining applications, Sacramento 072917 filed by Ernest C. and Rachel W. Abbott, Sacramento 074600, filed by Joe J. Montez, and Sacramento 075349, filed by John Dennis Ahearn, were submitted under the regulations 43 CFR 250 and 296, before their amendment on June 14, 1963.

There is a conflict between all of the applications concerned in that some part of the lands applied for are included in each one of the applications involved. For this reason the cases are considered together.

The Public Sale Law, (43 U.S.C., § 1171), supra, authorizes the Secretary of the Interior to offer for sale land which in his judgment or discretion it would be proper to sell. Whether particular land is to be offered for sale or not is a matter committed wholly to the discretion of the Secretary, or that of his authorized delegate.

Bureau personnel, in examining the lands embraced in the subject applications and petition-application, have ascertained all relevant and material facts bearing on their character and use value, and came to a considered and informed judgment that the lands should not be disposed of at public auction because they are highly valuable for recreation and public purposes. There also appears to be no compelling reason for selling the lands.

The subject lands form a portion of two parcels numbered 211 and 212 in the San Luis Obispo-Santa Barbara Study Area, which study has recently been completed. Parcel 211 is a 440-acre tract bordering on the Salinas River for approximately one-half mile. There are large flat areas along the southwestern corner of the parcel which are suitable for organizational camping or similar recreation development. The California Polytechnic Institute in San Luis Obispo is interested in acquiring the parcel for educational and recreational activities and is presently preparing an application for the tract. Parcel 212 is a 1400-acre parcel which is an integral part of a planned access trail system from Atascadero to Santa Margarita Lake. Small flat areas along the major canyon through the tract provide excellent sites for trail camps. One flat near the southern end of the parcel is suitable for a picnic area if access is acquired. The Salinas River runs across the western portion of the tract.

The transfer of portions of these lands into private ownership under public sale would fragment the parcels and would hinder or prohibit full development of the remaining portion for educational and/or recreational purposes and make management of other public lands in the area more difficult.

It has been consistently held by the Department that public lands which are highly valuable for recreation and public purposes will be made available to the public for such purposes, rather than be disposed of at public auction. Cf. Marie Caldwell, A-29632 (May 26, 1964).

Accordingly, the public sale applications filed by Ernest C. and Rachel W. Abbott, Joe J. Montez, and John Dennis Ahearn are hereby rejected, and the petition-application filed by John Dennis Ahearn is hereby denied. 1/

This decision constitutes a final administrative determination by the Department under 43 CFR 1844.1 as to the public sale applications filed by Ernest C. and Rachel W. Abbott, Joe J. Montez, and John Dennis Ahearn, and under 43 CFR 2411.2(d) as to the petition-application filed by John Dennis Ahearn, which decision is reviewable in the Courts as otherwise provided by law.

Charles H. Stoddard

Director

Approved: October 19, 1965

Assistant Secretary of the Interior

1/ The Director, Bureau of Land Management has authority at any time to take up and dispose of a matter pending in a land office or review any decision of a subordinate officer with or without an appeal. State of Utah, 71 I.D. 392 (1964).

DISTRIBUTION

Mr. and Mrs. Ernest C. Abbott
Mr. Joe J. Montez
Mr. John Dennis Ahearn
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD (1)
FC

Staff Asst. to Asst. Secy., LM
Asst. Solicitor, Land Appeals
Docket & Records Sec., Sol's. Office (2)

DOCKET FILES

Public Sales: Preference Rights 2243.1-4

An award of land offered at public sale between two preference right applicants will not be disturbed where it appears to have been properly made and the appellant fails to present convincing evidence that the award was unfair or based upon material error.

Public Sales: Procedures 2243.1

Where public sale regulations are revised after an application for public sale is filed but before the sale is held and where no rights have vested in the applicant which would be violated by the requirements of the new regulations, the application should be processed in conformity with the new regulations without regard to the time when the application was filed.

Dorothea G. Gridley, Melvin A. Stevenson, Sacramento 076406
(January 19, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 FEB 9 AM 10 00 (3)

In reply refer to:
704
Sacramento 076406

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 19, 1966

Certified Mail
Return Receipt Requested

DECISION

Dorothea G. Gridley :
Melvin A. Stevenson : Public Sale

Decision Affirmed as Modified

Dorothea G. Gridley has appealed from a decision of the Land Office, Sacramento, California, dated July 20, 1965, which rejected her public sale preference right bid and declared the other preference right bidder, Melvin A. Stevenson, to be the purchaser of 24.76 acres of public land described as lot 3, section 19, T. 37 N., R. 16 E., M.D.M., California.

In awarding the land to Mr. Stevenson, the decision of the Land Office stated:

> "It has been determined that the lands are to be awarded to Mr. Stevenson because of equitable considerations. These lands have been irrigated and used since 1929 as part of Mr. Stevenson's ranching operations and his predecessors. Mr. Stevenson obtains his livelihood from a cattle operation on his home ranch, the lands covered by this public sale and other public lands. Without Stevenson's water, the land would be virtually useless as a good stock pasture."

The Department's regulations governing award of lands between public sale preference right applicants provide that:

> Where two or more applicants apply to exercise the preference right provided for by the Act /R.S. § 2455 (1875) as amended, 43 U.S.C. § 1171 (1964)/ to the same tract of land, ... an equitable division of the land will be made, taking into consideration such factors as (i) the equalizing of the number of acres between the applicants, (ii) desirable land use, based on topography, land pattern, location of water, proper development of the lands and similar factors, (iii) legitimate historical use, including construction and maintenance of authorized improvements, and (iv) extent of contiguity and duration of ownership of adjacent lands. If considerations dictate, all of the lands may be awarded to one of the applicants. 43 CFR 2243.1-4(b)(3).

The record shows that lot 3 is bordered on the north and east by Mrs. Gridley's land and on the west by that of Mr. Stevenson. The award of lot 3 to either party would have little effect upon the land pattern in the area.

Most of the water which irrigates lot 3 originates from springs located on Mrs. Gridley's property in section 13, T. 37 N., R. 15 E. The water runs south into Mr. Stevenson's property in section 24. It is diverted from there into a ditch which runs across lot 3 and continues 750 feet into Mrs. Gridley's land in section 19, T. 37 N., R. 16 E. Apparently, Mrs. Gridley and Mr. Stevenson both have riparian rights to the water which runs through their land. In any event, the question of water rights is a matter of state law which we have no jurisdiction to determine.

Since both parties have owned land contiguous to lot 3 for many years, mere duration of ownership is not a factor which can be given great weight in determining to whom lot 3 should be awarded.

A fence, constructed by Elmer and Lyle Cook in 1941, runs along the north and east boundaries of lot 3, effectively segregating it from Mrs. Gridley's contiguous land. Since 1954, lot 3 has been included in the grazing permit of Mr. Stevenson's partnership, the Four Star Cattle Company. On June 11, 1964, due to the allowance of Mrs. Gridley's public sale application, a show cause order was issued deleting the seven animal unit months of grazing privileges contained in lot 3 from the Cattle Company's permit.

Thus, for the ten years immediately preceding allowance of the public sale application, Mr. Stevenson's company, by virtue of the grazing permit, had the exclusive right to use lot 3 in conjunction with the contiguous land in section 24. Mrs. Gridley has not held a permit to graze lot 3. In fact, her contiguous land is separated from it by the above mentioned fence.

It appears, therefore, that the decisive factor governing the award of land made in this case is legitimate historical use. The record shows that, in recent years, lot 3 has been actively used as an integral part of the ranching operations conducted by Mr. Stevenson. This history of use under a permit from the Bureau of Land Management appears to outweigh all other factors considered.

An award of land offered at public sale between two preference right bidders will not be disturbed in the absence of convincing evidence that the award works an undue hardship on the protestant, conflicts with historic use, or creates an undesirable land pattern. Hilburn Wolf Reed, A-27951 (July 27, 1959). Nor will an award of land be disturbed where it appears to have been properly made and the appellant fails to present convincing evidence that the award was unfair or based upon material error. Mendell P. Schneider, A-27891 (April 23, 1959), Barbarita Montoya, A-28885 (July 9, 1962). After careful consideration, we must conclude that the evidence presented by Mrs. Gridley on appeal does not justify reversing the award of lot 3 to Mr. Stevenson.

It is noted that in certain respects the Land Office did not follow current regulations in conducting public sale Sacramento 076406.

Mrs. Gridley's public sale petition-application was filed in the Land Office on August 14, 1963. The revised public sale regulations became effective on July 28, 1964, the date of their publication in the Federal Register (29 F.R. 10462). The sale in this case was not held until November 19, 1964, and the purchaser was not declared until July 20, 1965. Thus, the revised regulations went into effect before the sale was held or preference rights were asserted.

The mere filing of a public sale application does not give the applicant any right to the land applied for. Roscoe T. Schafer, A-28131 (August 27, 1959). Therefore, where public sale regulations in effect at the time an application is filed are revised before the sale is held and where no rights have vested in the applicant which would be violated by the requirements of the new regulations, the Land Office should conduct the sale in accordance with the new regulations. Cf. Lee Pennington, A-30455 (December 6, 1965).

In this case, the Land Office followed obsolete regulations in requiring Mrs. Gridley to publish legal notice of the sale at her own expense. The revised regulations, which should have been followed, provide that each petition-application must be accompanied by a $50 deposit to defray the cost of publication. If the authorized officer determines that the land should be sold, he, rather than the applicant, must arrange for publication of the notice of sale. The $50 deposit is returned to the applicant by the Land Office if the land is sold to another party. 43 CFR 2243.1-1(b), 2243.1-2(a).

In a letter dated November 9, 1964, the Land Office advised Mr. Stevenson's attorney that a deposit to cover the cost of publication did not have to accompany Mr. Stevenson's bid for the land because the publication was arranged by Mrs. Gridley. The Land Office decision of July 20, 1965, which awarded the land to Mr. Stevenson, required him to furnish evidence within 15 days that he had directly reimbursed Mrs. Gridley for the cost of publication. This procedure was correct under the old regulations, but the revised regulations provide that within 30 days after the sale a preference right applicant must submit to the authorized officer the amount of his bid plus an additional sum to cover the cost of publication. 43 CFR 2243.1-4(b)(1). The Land Office, rather than the person who is awarded the land, has the duty of returning the cost of publication to the unsuccessful applicant.

The Land Office furnished Mrs. Gridley and Mr. Stevenson with blank certificates of proof of ownership of contiguous land for establishing their respective preference rights to purchase. The printed instructions on the certificates were derived from the old regulations which required proof that contiguous land was owned on the date of the sale or thereafter. The certificates were returned to the Land Office showing that each preference right claimant owned contiguous land on the date of the sale. The revised regulations require proof that contiguous land was owned on the thirtieth day following the date of the sale. 43 CFR 2243.1-4(b)(2). Thus, neither party submitted satisfactory proof of ownership of contiguous land.

When this decision becomes final, Mr. Stevenson will be required to submit proof of ownership of contiguous land in accordance with the above cited regulation. In addition, he must submit the cost of publication to the land office. The Land Office, in turn, will reimburse Mrs. Gridley.

The decision of the Land Office, Sacramento, California, dated July 20, 1965, is affirmed as modified.

Dorothea G. Gridley is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Subpart 1844 See Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant will have the burden of proving by presenting positive and substantial evidence wherein this decision is in error. With her appeal Mrs. Gridley should also file proof of ownership of contiguous land in accordance with 43 CFR 2243.1-4(b)(2). Mrs. Gridley must serve a copy of her appeal on the adverse party, Mr. Stevenson, through his attorney, Mr. Daly B. Robnett, Attorney at Law, P. O. Box 766, Alturas, California 96101.

Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION
Keith S. Humpherys, Attorney for appellant (Certified Mail)
Daly B. Robnett, Attorney for adverse party (Certified Mail)
Mrs. Dorothea G. Gridley
Mr. Melvin A. Stevenson
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
AKR

appeal to Sec. X to Misc
Rev. & Remanded
A-30620
11-23-64

DOCKET FILES

Public Sales: Generally 2243

Where, after a tract of public land is advertised for public sale, a good faith color of title claim is filed for that land, action on the public sale should be suspended until the title issue is resolved.

Public Sales: Award of Lands 2243.1-6

Land occupied by one in good faith under color or claim of title is not subject to disposal to another by public sale until the title claimant is afforded an opportunity to establish his claim.

Color or Claim of Title: Improvements 2214.1-1

An application for patent under the Color of Title Act is properly rejected where the applicant fails to satisfactorily show that valuable improvements have been placed on the applied for land.

Virgil H. Menefee, Hammonds Ranch, Inc., Sacramento 072963, 079677
(March 8, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 MAR 22 PM 2 43 (3)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 072963
079677

March 8, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Virgil H. Menefee Hammonds Ranch, Inc.	:	Color of Title Application Public Sale

Decision Sacramento 072963, Reversed
Decision Sacramento 079677, Affirmed

Virgil H. Menefee has appealed from a decision of the Sacramento Land Office, dated September 10, 1965, rejecting his application, Sacramento 079677, to purchase the SW¼SW¼ sec. 24, T. 11 S., R. 7 E., M.D.M., California, under the Color of Title Act, 45 Stat. 1069 (1928), as amended, 43 U.S.C. § 1068 (1964). The decision also rejected the appellant's bid to purchase the described tract which was offered at public sale on June 24, 1965, pursuant to an application, Sacramento 072963, filed by Hammonds Ranch, Inc., under the Public Sale Law, Rev. Stat. § 2455 (1875), as amended, 43 U.S.C. § 1171 (1964). The decision appealed from declared Hammonds Ranch, Inc. to be the purchaser of the tract offered at the public sale.

The appellant's color of title application was rejected for the reason that no improvements had been placed on the land sought and no part of the land had been reduced to cultivation as required of a class 1 claim under the regulations issued pursuant to the Color of Title Act, *supra*. The bid submitted by the appellant at the public sale was rejected because he failed to make timely payment to the Land Office of the cost of publication of the public sale notice, and therefore he lost his preference right to purchase the tract under the Public Sale Law, *supra*.

The appellant submitted two statements of reasons, one related to the public sale case and the other to his color of title application.

The appeal involving the public sale will be considered first. The appellant contends, in substance, that the decision appealed from is erroneous, because the regulations provide that the cost of publication of the public sale notice is not required to be posted until after the Bureau determines that a preference right to purchase under the Public Sale Law has been established.

The record shows that Hammonds Ranch, Inc. filed a public sale application on September 20, 1962, for the 40-acre tract described above. The authorized officer, on January 25, 1965, classified that tract for public sale and fixed its current market value at $2,000. The sale was set for June 24, 1965, and notices of the sale were sent to Hammonds Ranch, Inc. and to the appellant as well as other interested parties. The appellant's attorney notified the Land Office, by a letter dated June 2, 1965, that his client owns the 40-acre tract in question, having purchased it in 1941, and in support thereof he enclosed with his letter a copy of the appellant's deed to that tract. On June 4, 1965, the Land Office advised the appellant's attorney that since the sale could be cancelled at any time prior to the issuance of the final certificate, the sale would be held on the date scheduled. This was done, and Hammonds Ranch, Inc. was declared the high bidder by a decision dated June 25, 1965. In that decision, owners of adjoining lands, including the appellant, were advised of their right to assert their preference rights to purchase the tract offered at the public sale.

The appellant filed his color of title application on July 1, 1965. In an endeavor to safeguard his interests in the land, the appellant on July 22, 1965, asserted his preference right in the public sale as an adjoining land owner and he submitted an offer of $2,000 to meet the high bid of Hammonds Ranch Inc. However, the Sacramento Land Office decision of September 10, 1965 rejected the appellant's bid because he did not submit during the preference right period the cost of publication of the sale notice. Hammonds Ranch was thereupon declared to be the purchaser of the tract.

When the appellant submitted documentary evidence, in the form of a deed purporting to show that he was claiming the subject land in good faith, under color or claim of title, all action on the public sale should have been suspended, and the color of title claim should have been adjudicated to a conclusion. See Roscoe T. Schafer, Pueblo 060371 (April 17, 1959). By proceeding with the sale the Land Office placed the color of title claimant in the paradoxical position of having to comply with the public sale law at the same time that he was asserting ownership of the land under the Color of Title Law.

Accordingly, all actions taken by the Land Office in the public sale, after declaring Hammonds Ranch, Inc. the high bidder, [1] were premature, and the ruling declaring Hammonds Ranch, Inc. the purchaser of the land is vacated.

Next, we will consider the appellant's application to purchase the tract in question under the Color of Title Act, supra, as a class 1 claim as defined in the pertinent regulations.

---

[1] The decisions to hold the sale and declare the Hammonds Ranch, Inc. the high bidder are not fatal errors in this case only because Mr. Menefee happens to be an adjoining land owner and, under the regulations, he is allowed to meet the high bid in his capacity of a preference right claimant.

Departmental regulations, 43 CFR 2214.1-1(b), provide that:

> "x x x A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. x x x"

The appellant, while admitting that no part of the land involved has been reduced to cultivation, alleges that the tract is grazing land and that on three different occasions he reseeded the land with alfalfa, wild oats, rose clover and rye grass. Then, he states that:

> "x x x We would agree that the results of the reseeding of grazing and pasture land may not be too evident to the naked eye, but the statements by Mr. Menefee and Mr. Anderson in this regard go uncontradicted. x x x"

The appellant also alleges that he had constructed a road on the tract in 1962. This he emphasizes with the statement that:

> "x x x In fact, he constructed this road before 1962, but had since reworked the road, the last time being in 1962. x x x This road enables the land to be put to its highest and best use, since an owner of said land can now transport cattle to the land x x x
>
> "x x x Mr. Menefee has a 1951 and a 1961 U. S. Geodetic Survey Map x x x clearly indicating this road. x x x"

The appellant also submitted the statements of two persons who purport to verify that the said road does exist.

The appellant's statement of reasons indicates that he desires a hearing in this matter.

A report of field examination made on September 11, 1964, states that there were no improvements of any kind on the land. Thereafter, when the appellant alleged that valuable improvements were made on the land, the case file, together with the appellant's statement of reasons, was returned to the Bureau's California State Director for a further field examination. A further field examination was made, and a report dated January 28, 1966, supplemented with color photographs, was submitted to this office.

The report states in part:

x x x x x

> "x x x the road claimed by the Color-of-Title applicant is a mere trail used by the applicant for carrying range salt or checking cattle by jeep. x x x.

x x x x x

> "x x x the subject trail is not an improvement which would meet minimum requirements as an unimproved road, is not necessary for access, did not involve any substantial cost in construction, x x x."

The Department has held that an application for patent under the Color of Title Act, supra, will be denied where the applicant fails to show, to the satisfaction of the Secretary of the Interior, that valuable improvements have been placed on the land applied for, as required by the act. Homer Wheeler Mannix et al., 63 I.D. 249 (1956). In the Mannix case, where the alleged improvements had disappeared or become obscured and two field examinations disclosed that there was no evidence of improvements on the land, the Department stated that, under these circumstances, it cannot be held that a showing has been made to the Secretary, that valuable improvements have been placed on the land as required by the Color of Title Act.

After careful consideration of the record and the appellant's statement of reasons, in light of the above cited Departmental decision, we conclude that the road alleged to have been constructed on the land in question by the appellant does not constitute a valuable improvement within the meaning of the Color of Title Act. Accordingly, the decision rejecting the appellant's color of title application was proper, and it is affirmed.

With respect to the appellant's request for a hearing, we believe that the factual information in the record is sufficient to reach an informed decision on the issue as to improvements, and that a hearing in this matter would serve no useful purpose. Therefore, the request for a hearing is denied.

When this decision becomes final, the public sale case will be remanded to the Land Office and the preference right applicants will be accorded an opportunity to comply with the provisions of 43 CFR, 1965 ed, 2243.1-4 and 2243.1-5 before any determination is made as to who should be declared the purchaser of the land.

Virgil H. Menefee and Hammonds Ranch, Inc. are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each separate interest adversely affected by this decision. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is taken by Virgil H. Menefee, the adverse party to be served is:

Hammonds Ranch, Inc.
47375 West Dakota Avenue
Firebaugh, California 93622

In the event of an appeal by Hammonds Ranch, Inc., the adverse party to be served is:

Virgil H. Menefee
c/o John O. Germino
Law Office of D. Oliver Germino
P. O. Box 591
Los Banos, California 93635

James F. Doyle
Chief, Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
John O. Germino, Attorney at Law (Certified Mail)
Virgil H. Menefee
Hammonds Ranch, Inc.
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD (1)
Appeals List No. 1
MHS

DOCKET FILES

Public Sales: Generally 2243

Where the high bid in a public sale is rejected because the parcel of land had been determined, upon reappraisal, to have substantially increased in value, due to "much recent activity" and such recent activity is not reflected in the reappraisal report or the information in the case record, the case will be remanded for further consideration.

Charles N. Eischem, Sacramento 079220 (July 7, 1966)

In reply refer to:
704
Sacramento 079220

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

July 7, 1966

DECISION

Charles N. Eischem : Public Sale
:
:

Decision Vacated
Case Remanded

Charles N. Eischem has appealed from a decision of the Sacramento Land Office, dated January 6, 1966, rejecting his high bid of $1,600 for an isolated 40-acre tract of land offered at public sale under Rev. Stat. § 2455 (1875), as amended, 43 U.S.C. 1171 (1964). The appellant's bid was rejected because it was found, upon a review of the appraisal, that the price at which the land was offered for sale on November 18, 1965, did not represent its fair market value as of that date; such fair market value having been determined on reappraisal to be $2,400 rather than $1,600.

The appellant alleges that there is no valid basis for the higher appraised price because the subject tract had been offered for sale at public auction for $1,600 every Thursday since early spring in 1965, and there have been no bidders. He also points out that none of the owners of the adjacent lands who were notified of their right to assert a preference right to purchase the tract at $1,600 made any offers to buy the land.

The record shows that the original fair market value appraisal of the land was made on October 14, 1964, and that the first time the land was put up for public auction was on March 4, 1965. There were no bidders for the land, at the $1,600 figure, at the March 4 auction or at any of the subsequent Thursday auction sales. On November 5, 1965, it was suggested that the tract be withdrawn from current sale offering. On November 8, 1965, the appellant submitted a $1,600 sealed bid for the tract. The appellant was the high bidder for the tract at the Bureau's November 18, 1965 sale.

The market value of the subject tract was reappraised on November 30, 1965. The reappraisal report states in part:

> ". . . The immediate vicinity of the subject has experienced much recent activity as shown by the large number of nearby sales as compared with those in the original appraisal. . . ." (Underline added)

The reappraisal report shows, however, that three of the comparative sales that were considered were made in 1964, one was made in January 1965 and the fifth comparative sale was made in August 1965. Also, the most comparable sale in the reappraisal was made on January 31, 1964 whereas the most comparable sale in the earlier appraisal was made on June 4, 1964. This discrepancy was brought to the attention of the Bureau's State Director for California and the explanation was that the sale data given the most weight in the original report were not in the same neighborhood as the subject land. In such circumstances, it is apparent that the test of market value in the reappraisal was the degree of comparability and not recent sales activity in the immediate vicinity of the land.

Whether the January 1964 comparability sale can be considered as a criterion for a determination of increased market value or for a more accurate market value cannot be made from the data furnished. In any case, the appellant should be accorded the opportunity of seeing these appraisal reports, of commenting thereon, and if he desires, submit his own appraisal of the market value of the tract.

Accordingly, the Land Office decision is vacated and the case is remanded for further consideration.

John B. Piccolo
Acting Chief,
Office of Appeals and Hearings

DISTRIBUTION:
Charles N. Eischem
Div. of L&M, S&T (4)
Div. of L&M, PM (2)
OPD
Appeals List No. 1
MHS

1966 JUL 18 AM 9 28
DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

PS x Sel

DOCKET FILES

Sacramento 063368
079131

JULIAN LINDSAY, STATE OF CALIFORNIA

Approved August 4, 1966

Public Sales: School Lands--Indemnity Selections: Classifications--Protest

A protest made by a public sale applicant against the classification of the applied for land for indemnity school-land selection will be dismissed, even though the public sale application was filed first, where it is determined that the land is more suitable for indemnity selection, pursuant to a petition-application subsequently filed by the State of California, because disposal of the land to the State would assure the achievement of the maximum uses of the land consistent with State and Federal programs for land management.

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 AUG 12 AM 10 00

In reply refer to:
721
Sacramento 063368
079131

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 27, 1966

DECISION

Julian Lindsay : Public Sale Application

State of California : Indemnity School-land Selection Petition-Application

:

Public Sale Application Rejected
Indemnity School-land Selection Petition-Application Approved

On June 20, 1960, Julian Lindsay filed an application, Sacramento 063368, pursuant to Rev. Stat. § 2455 (1875), as amended, 43 U.S.C. § 1171 (1964), to purchase a tract of public land described as Lot 3, sec. 6, T. 11 N., R. 7 W., M.D.M., California, containing 33.11 acres.

On November 12, 1964, the State of California through the Lands Division, filed a petition-application to select the same land, pursuant to Rev. Stat. § 2275 and 2276 (1891), as amended, 43 U.S.C. §§ 851, 852 (1964), in lieu of the same amount of school grant land lost to the State.

On January 7, 1965, the Bureau's State Director for California issued a decision proposing to classify the land for State selection, and denying the application for public sale. Mr. Lindsay protested this decision on February 8, 1965.

In his protest, Mr. Lindsay contends, in substance, that (1) the State's filing was given preferential treatment in view of the fact that his application was filed over three years before the State filed its petition-application, (2) there is no stream on the land, (3) the land is not valuable for timber, and (4) the land should be put to private use for watershed protection and to increase county taxes. The protestant further asserts that the State has not developed the 3,400 acres of forest lands in the Boggs Mountain State Forest (to which the subject land is contiguous), and has no plans to do so.

Record information shows that the land in question is isolated in relation to other Federal lands, but it extends into the State Forest as a peninsula, and contains a small amount of Ponderosa pine and Douglas fir trees. Field examination also disclosed that Spikenard Creek, an annual stream, does in fact traverse the southwest corner of the tract. State ownership of the land would block up the Boggs Mountain lands owned by the State, and would thereby preclude boundary and certain other administrative problems. In addition, the general area is valuable for public recreation since it contains several popular resort centers, mineral springs, and well established lodges, and because the State Forest itself, contains large hunting grounds. The proposed transfer of the land to the State would, therefore, increase the recreational opportunities for the general public in this area.

It is recognized that the public sale application was filed by Mr. Lindsay several years prior to the petition-application filed by the State of California. However, it can only be concluded that while the land in question might be suitable for sale under the public sale law, in view of the above-cited facts the public interest would demand that the land be retained in some form of public ownership in order that its maximum uses may be realized consistent with the State and Federal land management programs. In this respect, under the criteria for classifying public lands for their use or disposal as specified in the applicable regulation, 43 CFR 2410.1-1(a)(2), all present and potential uses and users of the lands must be taken into consideration.

Moreover, it has been well established by the Department as well as the Courts, that the authority granted to the Secretary of the Interior, or his delegate, to examine and classify public land for disposal under section 7 of the Taylor Grazing Act of June 28, 1934, as amended, 48 Stat. 1269, 1272, 43 U.S.C. §§ 315a, 315f (1964), is discretionary in scope. In exercising the discretionary authority vested in him by section 7 of the Act, the Secretary may properly consider and weigh all factors which have a bearing on the suitability of the land for use or disposal, including the effect on the public interest. The fact that the land may be suitable for disposition under the first application filed therefor, does not require that the land be classified for such disposition if the land is more suitable for other disposition, and it is more in the public interest to so dispose of the land. See Nelson A. Gerttula, 64 I.D. 225 (1957). Sustained by the Courts in Nelson A. Gerttula v. Stewart L. Udall, 309 F. 2d 653 (1962).

The protestant, Mr. Lindsay, has not presented any positive or substantial evidence showing that the classification of the land in question for disposal to the State of California under its indemnity school-land selection petition-application is in error.

Accordingly, the public sale application filed by Julian Lindsay is rejected, and the indemnity school-land selection petition-application filed by the State of California is approved.

This decision constitutes a final administrative determination by the Department under 43 CFR 1844.1 as to the public sale application filed by Julian Lindsay, and under 43 CFR 2411.1-1(e)(4), as to the indemnity school-land selection petition-application filed by the State of California.

John O Crow

Acting Director

Approved: August 4, 1966

Assistant Secretary of the Interior

DISTRIBUTION
Mr. Julian Lindsay
State of California Lands Commission, State Lands Division, Department of Finance
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Staff Assistant to Assistant Secretary, PLM
Assistant Solicitor, Land Appeals
Docket & Records Section, SOL (2)
Appeals List No. 1
FC

appeal to Sec.
affirmed A30726
11-8-66

DOCKET FILES

Public Sales: Preference Rights 2243.1-4

Where certain lands located in California were offered for sale at public auction and a certificate, executed by a husband and wife, stating that they are the sole owners in fee simple of contiguous lands, is submitted by them to establish their preference right to purchase the offered lands, and part 2 of the certificate, executed by a title company states that the county records show the husband is the sole owner of such contiguous lands, the certificate of the husband and wife is deemed sufficient under California law to establish their ownership of such contiguous lands as community property. Therefore, the preference right claim asserted by the husband and wife meets the requirements of regulation 43 CFR 2243.1-4(b)(2), even though the husband only is shown on the county records as the sole owner of such contiguous lands.

W. R. Bradford et al., J. A. Cook et ux, Riverside 05858 (August 16, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 SEP 1 PM 3 14 (3)

In reply refer to:
704
Riverside 05858

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 16, 1966

Certified Mail
Return Receipt Requested

DECISION

William R. Bradford :
Barbara Bradford
Delbert B. Bradford :
Alice M. Bradford
Appellants : Public Sale

Jack A. Cook :
Elizabeth M. Cook
Protestants :

Decision Reversed

William R. and Barbara Bradford, husband and wife, and Delbert B. and Alice M. Bradford, husband and wife, have appealed from a decision of the Riverside District and Land Office dated April 29, 1966. That decision (1) rejected a joint preference right bid submitted by the Bradfords to purchase certain lands which had been offered for sale at public auction, (2) declared Jack A. and Elizabeth M. Cook, who had also submitted a preference right bid, to be the purchasers of the offered lands, and (3) vacated a prior decision rendered by the land office on March 11, 1966, allowing the Bradfords and the Cooks an opportunity to reach an agreement on a division of the offered lands between them.

The decision appealed from states that on April 1, 1966, Mr. and Mrs. Cook filed an objection to the preference-right claim asserted by the Bradfords. The Cooks alleged that the certificate of ownership of the contiguous lands on which Delbert B. and Alice M. Bradford based their preference-right claim is defective because the certificate shows that the whole title to such contiguous lands is in the name of Delbert B. Bradford only. 1/ The District and Land Office thereupon concluded that the certificate of ownership submitted by Delbert B. and Alice M. Bradford shows on its face that it does not meet the requirements of regulation 43 CFR 2243.1-4(b)(2), and sustained the objection made by the Cooks. The decision ruled:

> "As the preference right bid of William R., Barbara, Delbert, and Alice Bradford, is a single joint bid, and has not been supported by the required ownership of each person to adjoining

---

1/ The certificate of ownership submitted by William B. and Barbara Bradford was not challenged.

land it must be rejected. The Department has held that assertion by a group of individuals of a single preference right to purchase land offered at public sale is not entitled to recognition where it is shown that one member of the group does not own contiguous land, Richard M. Hatch et al., A-28209, decided May 4, 1960 (67 I.D. 187). * * *"

The appellants allege, in substance, as follows:

1. Any determination of Alice M. Bradford's interest in the contiguous lands the title to which is recorded in her husband's name must be made pursuant to California law.
2. There is no similarity between the Hatch decision and the facts in the instant case.
3. Alice Bradford's signature on the certificate of ownership executed by her and Delbert Bradford, her husband, manifested an assertion of her California community property interest in the contiguous lands.

Departmental regulation 43 CFR 2243.1-4(b)(2) provides, in pertinent part:

> "Each preference-right applicant must . . . submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30-day period. . . . If the preference-right applicant does not own adjoining land at the close of the preference-right period, his preference-right claim will be lost. . . ."

The appellants are correct in their allegation that the Hatch decision, supra, is not relevant to this case. The question in the Hatch case was whether a single preference-right claim can be jointly made by an owner of contiguous land and an owner of noncontiguous land. It has never been asserted that Alice Bradford's claim was based upon the ownership of noncontiguous land.

The certificate of ownership executed by Delbert B. Bradford and Alice M. Bradford states:

> "We, Delbert B. Bradford and Alice M. Bradford are the sole owner(s) in fee simple of the following described lands . . . ."

An affidavit signed by Delbert Bradford and submitted with the statement of reasons for appeal states in pertinent part:

> "That my wife, ALICE BRADFORD, and I . . . were married to one another on September 5, 1936 . . . .

> "That during said marriage my . . . wife and I have considered all property, real and personal, acquired by us, to be community property of our marriage in accordance with the laws of California."

In the State of California the separate property of the spouses may be converted into community property at any time by an oral agreement between the spouses. Luders v. Pummer, 152 C.A. 2d 275, 313 P.2d 38 (1957). Also, the provisions of § 172a, California Civil Code, were designed to protect a wife's community interest where the community property stands in the name of the husband. MacKay v. Darusmont, 46 C.A. 2d 21, 115 P.2d 221 (1941). The Department has recognized that the nature and extent of a person's interest in privately-owned land is governed by the law of the State in which the land is located. Alzada C. Carlisle and Parkhill Montana Ranches, Inc., A-25671 (November 17, 1949).

The applicable departmental regulation, quoted above, must be construed in light of the undisputed facts in this case and of the California law. Therefore, there was no legal basis for the ruling by the District and Land Office that the preference-right claim of the Bradfords was not adequately supported.

Accordingly, the decision appealed from is reversed. When this decision becomes final the case will be remanded to the District and Land Office which will allow the Bradfords and the Cooks a further opportunity to agree among themselves upon a division of the lands. In the absence of an agreement, the Bureau's authorized officer will then make an equitable division of the lands consistent with the standards set out in 43 CFR 2243.1-4(b)(3).

Jack A. and Elizabeth M. Cook are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

In the event of an appeal by Jack A. and Elizabeth M. Cook, the adverse party to be served is:

Swarner, Fitzgerald and Dougherty
Attorneys for William R., Barbara,
Delbert B. and Alice M. Bradford
3797 Tenth Street
Riverside, California 92501

John B. Ciccolo

Acting Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION

Arlie W. Bergman, Attorney at Law (Certified Mail)
Jack A. and Elizabeth M. Cook
Swarner, Fitzgerald and Dougherty
William R. Bradford et al.
Hon. Cecil R. King, House of Representatives
Hon. John V. Tunney, House of Representatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

Appeals Procedure: Generally 1840 P S DOCKET FILES

An appeal will be dismissed when the issue involved becomes moot.

Tomme Fentzling, Sacramento 062928 (August 17, 1966)

In reply refer to:
704
Sacramento 062928

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

August 17, 1966

DECISION

Tommee Fentzling : Public Sale
:

Appeal Dismissed
Case Remanded

Tommee Fentzling has appealed from a decision of the Sacramento Land Office, dated April 1, 1966, dividing the 200 acres of land sold in the above-identified public sale, in the absence of an agreement for the division thereof, as provided for in the applicable regulation, 43 CFR 2243.1-5, and declaring Mr. R. D. Karn to be the purchaser of 120 acres thereof.

The appellant was declared the purchaser of the remaining 80 acres of the land sold. Both the appellant and Mr. Karn exercised their preference rights to purchase the subject 200 acres of land sold as qualified adjoining land owners, and remitted the purchase price for the full 200 acres, plus the required publication costs.

Subsequent to the filing of the appeal, Mr. R. D. Karn by letter dated July 29, 1966, withdrew his bid for the subject land, and requested that his deposit for the purchase price and the publication costs in the total amount of $5076 be refunded to him.

Thus it appears that the appellant may now be declared the purchaser of all of the 200 acres sold at the subject sale, there being no other objection of record.

Therefore, since the issue involved in this matter has now become moot, the appeal is hereby dismissed, and the case record is remanded to the Manager of the Sacramento Land Office through the Bureau's office of the State Director for California for further appropriate action. Cf. Newton L. Hall, A-27646 (August 4, 1958).

John B. Piccolo
Acting Chief,
Office of Appeals and Hearings

DISTRIBUTION:
Mrs. Tommee Fentzling
Mr. R. D. Karn
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RBO

DOCKET FILES

Public Sales: Preference Rights 2243.1-4

Where a group of four preference-right applicants in a public sale submitted a certificate of ownership of adjoining land, showing that they have the undivided whole title in fee to such land, they cannot be deprived of their preference right to purchase the land offered for sale merely because only three of those four persons had participated in the sale as the high bidders. The exercise of the right to bid at the sale and the subsequent assertion of a preference right to purchase are not related.

Charles W. Morris et al., Andrew G. Sharf et ux., Riverside 07419
(October 3, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 OCT 28 AM 10 00 (3)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Riverside 07419

October 3, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTE

DECISION

Charles W. Morris et al., : Public Sale
Andrew G. Sharf et ux. :

Decision Reversed
Case Remanded

Charles W. Morris, Arthur G. Morris, Charles B. Withrow, and Thomas A. Harrison and each of their respective wives 1/ have appealed 2/ from a decision of the Riverside District and Land Office, dated March 1, 1966. This decision states, in pertinent part:

Preference Right of High Bidders Denied

> "Pursuant to their oral bid, by notice dated January 13, 1966, Charles Blaine Withrow, Charles W. Morris, and Thomas Alexander Harrison were declared the high bidders for the W½ section 16, T. 8 S., R. 2 E., SBM., California, containing 320 acres of land offered at public auction on January 11, 1966, under the provisions of Section 2455 Revised Statutes (43 U.S.C. 1171).
>
> On January 25, 1966, Charles Blaine Withrow, Charles W. Morris and Thomas Alexander Harrison and on February 10, 1966, Andrew G. Sharp and Marjorie L. Sharp filed preference right claims as owners of contiguous lands.
>
> By decision dated February 15, 1966, the high bidders were required to furnish evidence of their ownership of the whole title to contiguous lands.

1/ The attorneys for the appellants stated that the wives were joined as nominal and not as necessary parties in this appeal.

2/ The appellants state in their appeal brief that they have appealed in their capacity as co-partners. However, in view of the disposition made of their appeal, it is unnecessary to consider the appellants' allegation concerning their partnership agreement.

On February 17, 1966, they submitted a Certificate of Ownership to Establish Preference Right (Form 2243-3). This certificate indicates that in addition to the three above named high bidders a fourth party who is not a party to the original bid, Arthur G. Morris, owned an undivided one-fifth interest in the adjoining land on February 10, 1966. Since Mr. Arthur G. Morris was not a party to the purchase, the preference right applicants did not have whole title to the contiguous lands, that is, they did not show that they had the whole title in fee on the last day of the thirty day period, as required by the regulations at 43 CFR 2243.1-4(b)(2). Accordingly, the preference right must be and the same is hereby rejected.

On February 10, 1966, Andrew G. Sharp and Marjorie L. Sharp submitted a preference right claim, a certificate of ownership of adjoining land, and tendered payment of $33,620 which amount met the high bid of $33,600, plus the cost of publication, $20. Therefore, Andrew G. Sharp and Marjorie L. Sharp are hereby declared the purchasers of the above described land.

When the decision becomes final the purchase money and cost of publication will be returned to Charles Blaine Withrow, Charles W. Morris and Thomas Alexander Harrison, and further action looking to completion of the sale to the Sharps.

Charles Blaine Withrow, Charles W. Morris and Thomas Alexander Harrison are allowed the right of appeal to the Director, Bureau of Land Management. x x x"

The appellants allege in material part as follows:

1. Arthur G. Morris's name was intended to be included as one of the high bidders but it was omitted through inadvertence.

2. The decision declaring Andrew G. and Marjorie L. Sharf the purchasers of the subject land is null and void for the reason that the Sharfs were not bona fide preference-right claimants and purchasers. This is so, because they were not purchasing the lands for themselves but they had sold and assigned their preference right to the Center Realty Co., a California Corporation, on February 9, 1966, the day preceding the last day of the preference-right period.

3. If there was any defect in the appellants' bidding at the sale this was cured when the appellants filed their certificate of ownership to establish their preference-right claim.

The respondents, Andrew G. and Marjorie L. Sharf, filed an answer alleging, in pertinent part, that:

1. There is no basis for the appellants' charge that Sharfs' agreement to sell the sale tract nullified their right to purchase the land.
2. The appellants did not comply with the provisions of 43 CFR 2243.1-4(b) in that they failed to deposit the amount of their offer plus the cost of publication with their application.

The responsibility for the appellants' inadvertent omission of the name of Arthur G. Morris, as one of the high bidders, cannot be imputed to the District and Land Office which has no duty or authority to prepare acceptable applications for public lands or to alter any portion of an application in order to make it acceptable. Orvill Ray Mickelberry, A-28432 (November 16, 1960). Furthermore, in the absence of error on the face of the record, under departmental regulation 43 CFR 2243.1-4(a), only the "person" or persons who were "declared" high bidders are "bound" by the bid. Clearly then, no stranger to the bidding, especially where the bidding has already been "closed," can be added as a party to the bidding. The rule would have been otherwise as to Arthur G. Morris had the bidders revealed at or prior to the bidding that they were acting in a representative capacity. Hans Ewaldt, Ralph E. Albright, A-26171 (December 27, 1951); Mrs. Laura F. Warfield, A-27788 (January 16, 1959). Consequently, the three named high bidders were properly determined to have acted in their individual capacities.

However, notwithstanding the fact that each of the three, above named, high bidders was deemed to have acted in his individual capacity, this constitutes no legal bar to the acceptance of the appellants' preference-right claim on its own merits, under 43 CFR 2243.1-4(b). Cf. Richard M. Hatch et al., 67 I.D. 187, 190 (1960).

The record shows that the appellants had asserted their preference right claim by filing a certificate of ownership of adjoining land in the District and Land Office on January 25, 1966. This certificate contained four signatures, i.e., the three persons named in the decision appealed from as preference-right claimants and Arthur G. Morris. The District and Land Office refused to accept the certificate and returned it to the appellants because it showed that the appellants were the owners of the whole title in fee of the adjoining land on January 11, 1966, the date of the sale instead of February 10, 1966. February 10 was the critical date because it was the last day of the 30-day period for the assertion of preference-right claims.

By decision of February 15, 1966, the District and Land Office allowed the appellants 15 days from receipt thereof within which to submit proper evidence of their ownership of the whole title in fee of the adjoining land on February 10, 1966. The appellants filed such evidence on February 17, 1966. There is nothing in the decision appealed from or the case record indicating that the appellants' certificate of ownership of the adjoining land is defective in any way.

The Bureau's authorized officer in a public sale is required, by departmental regulation 43 CFR 2243.1-5(a) to accept the bid of the "highest bidder" "or" the offers of the preference applicants. There is nothing in the regulations percluding less than all the owners of a tract of adjoining land from making the high bid at the sale and thereafter allowing all the owners to join in asserting a preference-right claim. The bidders at a public sale are not required to be adjoining land owners. Therefore, it was error to reject the appellants' preference-right claim merely because Arthur G. Morris was not one of the named high bidders. Cf. Richard M. Hatch, supra, or merely because Arthur G. Morris who owned an undivided interest in the adjoining land on February 10, 1966, was "not a party to the purchase."

The respondents' allegation that the appellants had not complied with the provisions of 43 CFR 2243.1-4(b), in that they had failed to deposit the amount of their offer plus the cost of publication, is new matter that was not considered in the decision appealed from. It is noted, however, in the District and Land Office decision, that the Withrows, Charles Morris, and Harrison had deposited the full amount of the purchase money and cost of publication. It is also noted that there is no specific provision in the regulation cited by the respondent requiring separate deposits by the high bidders and the preference-right claimants, where such parties are essentially the same people. The Department has ruled, in similar situations, that where an applicant is to be deprived of a statutory preference right because of his failure to comply with the requirements of a regulation, that regulation should be so clear that there is no basis for the applicant's noncompliance therewith. Madge V. Rodda, Lockheed Propulsion Company, 70 I.D. 481 (1963).

There is no merit to the appellants' allegation that the Sharfs were not bona fide preference-right claimants or that they had "assigned" their preference-right claim, merely because they had entered into a contract to sell the subject land to another for a 5% profit. The appellants have not submitted any evidence showing that Sharfs' activities were collusive, have hindered or restrained free and open bidding, or that they have otherwise violated the provisions of regulation 43 CFR 2243.1-5(b).

Therefore, that part of the District and Land Office decision which rejected the appellants' preference-right claim and which declared Andrew G. and Marjorie L. Sharf the purchasers of the subject land is reversed, and the appellants' preference-right claim is reinstated. When this decision becomes final the case will be remanded for further consideration consistent with the provisions of 43 CFR 2243.1-4(b)(3) and departmental decision Madge V. Rodda, Lockheed Propulsion Company, supra.

The appellants and Andrew G. and Marjorie L. Sharf are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

In the event of an appeal by Andrew G. and Marjorie L. Sharf, the adverse party to be served is:

Charles W. Morris, et al.
c/o Justin M. McCarthy, Redwine and Sherrill
and Elmer C. Coker
Attorneys at Law
Suite 840 Security Building
Phoenix, Arizona 85004

In the event of an appeal by the appellants the adverse party to be served is:

Andrew G. and Marjorie Sharf
c/o Walker, Sullivan, Hews & Brown
Attorneys at Law
P. O. Box 789
3556 Tenth Street
Riverside, California 92502

John B. Piccolo

Acting Chief, Office of Appeals and Hearings

Enclosures

DISTRIBUTION:

Walker, Sullivan, Hews & Brown, Attorneys at Law (Certified Mail)
Elmer C. Coker, Attorney for Appellants (Certified Mail)
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Andrew G. and Marjorie L. Sharf
Charles W. and Arthur G. Morris, Charles B. Withrow, and Thomas A. Harrison
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

Public Sales: Generally 2243

Where no final action dispositive of a proposed public sale has been taken, no appeal will lie from interlocutory actions taken by the local land office. A protest against the appraisal of the value of tracts of public lands to be offered at the sale must be dismissed.

Arnold S. Rummelsburg, Bill G. Minton, Sacramento 078606, 079106 **(October 14, 1969)**

In reply refer to:
141
Sacramento 078606
079106
October 14, 1969
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

DECISION

Arnold S. Rummelsburg :
and Bill G. Minton :
:

Public Sales

Appeal Dismissed

On June 2, 1964, Arnold S. Rummelsburg applied to purchase a tract now described as lot 7 sec. 18, T. 31 N., R. 5 W., M.D.M., California. On October 29, 1964, Bill G. Minton and Arnold S. Rummelsburg applied to purchase two other tracts in sec. 18 now described as lots 8 and 9. Pursuant to these applications, the lands were classified as proper for public sale. After the appraisal and the survey of the lands was completed, notice was published of a public sale of the lands to be held on July 31, 1969. The applicants protested the appraisals of the land. Their protest was dismissed by Sacramento Land Office decision of August 20, 1969, from which the parties have filed their appeal.

Under 43 CFR 1842.2, any party to a case adversely affected by a decision of an officer of the Bureau, other than the Director, shall have the right of appeal to the Director. The classification and appraisal of the lands at issue is an interlocutory action, not dispositive of the land and is not an appealable matter. No action has yet been taken by the Sacramento office which could adversely affect these applicants. They requested the public sale of the land, and affirmative action was taken pursuant to their requests looking to the offering of the lands at the public sale scheduled for July 31.

The protest filed by Messrs. Rummelsburg and Minton merely postpones the sale and raises only speculative issues regarding the possible effect which the outcome of the sale may have on them. They have not been precluded from the sale, and have the same right to bid at the sale as any other citizen similarly situated. If they are successful, they will acquire the land. If a decision is issued declaring another the purchaser, and the protestants feel that the decision is in error, they would then have the right of appeal, because such a decision would be a final action dispositive of the matter, unless an appeal is then taken.

Accordingly, the appeal from the Sacramento Land Office decision is dismissed.

Edward W. Stuebing

Chief, Branch of Land Appeals
Office of Appeals and Hearings

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Bill G. Minton and Arnold S. Rummelsburg (Certified Mail)
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200
Hon. Harold T. (Bizz) Johnson, House of Representatives
Appeals List No. 1

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ACTION BY
RETURN TO

Los Angeles 0134981

MARY GAREWALL GILL

Approved NOV 13 1970

Application to Purchase

When the terms of a special Act of Congress have been complied with, and regulations thereunder no longer are effective, a pending application under such Act must be considered in accordance with existing conditions.

Classification: Imperial Valley Lands

An agricultural use application for lands in Imperial Valley, California which would require the use of Colorado River water must be rejected under the rule enunciated in the Ritter-Bunn decision of 1965 (72 I.D. 111)

IN REPLY REFER TO:
2700 (322)
Los Angeles
0134981

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

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DECISION

Mary Garewal Gill	:	Application to Purchase,
	:	Act of March 3, 1909

Application Rejected

On July 29, 1955, Mary Garewal Gill filed application Los Angeles 0134981 to purchase lot 30 sec. 16, and lots 1 and 16 sec. 21, T. 15 S., R. 16 E., S.B.M., California, under the Act of March 3, 1909 (35 Stat. 779), and the regulations of May 13, 1916 (45 L.D. 88). Pursuant to Bureau decision of May 19, 1959, her application was rejected and the case closed as to lots 1 and 16 sec. 21. There remains for consideration only lot 30 sec. 16, above township and range.

On April 30, 1959, the Associate Solicitor, Division of Public Lands, informed this Bureau that the regulations of 1916, supra, are no longer effective. Furthermore, the lands have been offered for sale thereunder, and the 1909 Act has been executed. In the absence of regulations, and since the terms of the 1909 Act have been executed, the Gill application must be considered in accordance with existing conditions.

The Department has clearly enunciated the policy that lands in the Imperial Valley, California, are not proper for disposition, and that the disposal of such lands would be contrary to the public interest, where such disposal would increase the pressure on the inadequate water supply available for use in California from the Colorado River. Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965). The land at issue is within the Imperial Valley,

California, and its use would be, and has been, for agricultural purposes requiring the use of Colorado River water. Accordingly, it is not subject to disposal under the prohibition expressed in the Ritter-Bunn decision, supra, and the Gill application is rejected as to lot 30 sec. 16, T. 15 S., R. 16 E., S.B.M., California.

This decision constitutes the final administrative determination of the Department.

John O Crow
Acting Director

Approved: NOV 13 1970

Harrison Loesch
Assistant Secretary of the Interior